Strong.

Reverse.

Strong

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~115.~~ 189

DANIEL EDWARDS, PLAINTIFF IN ERROR,

vs.

EMILE TANNERET.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED JANUARY 4, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 415.

DANIEL EDWARDS, PLAINTIFF IN ERROR,

vs.

EMILE TANNERET.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

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1 Circuit court of the United States, fifth circuit and district of Louisiana.

DANIEL EDWARDS } vs. EMILE TANNERET. } No. 5737.

Motion and order to transfer cause from provisional court.—Filed December 23, 1868.

UNITED STATES OF AMERICA, *District and State of Louisiana:*

DANIEL EDWARDS } vs. EMILE TANNERET. }

No 448 upon the docket of the late provisional court for the State of Louisiana.

On motion of Case & Rouse, attorneys for Daniel Edwards, and upon suggesting to the court that said Edwards did recover a judg-
2 ment against said Tanneret in said cause in said court, which he desires executed; and further suggesting that said Tanneret is an alien and a citizen of the Empire of France, and that said Edwards is a citizen of the State of Louisiana, it is ordered that said cause be transferred to the circuit court of the United States for the 5th circuit and district of Louisiana, to be proceeded in according to law.

Record No. 448.—Transferred and filed December 23d, 1868.

Petition.—Filed Decem. 21*st*, 1864.

To the Honorable Charles A. Peabody, judge of the United States provisional court of Louisiana:

The petition of Daniel Edwards, a loyal citizen, residing in the city of New Orleans, with respect shows—

3 That Emile Tanneret, residing on False River, in the parish of Pointe Coupee, is justly and truly indebted unto your petitioner for balance of account in the total sum of four thousand nine hundred and ninety-five dollars and twenty-nine cents, for this, to wit:

That your petitioner furnished all the materials and provided all the workmanship for making and erecting certain works on the plantation of the said Emile Tanneret, on False River, in the parish of Pointe Coupee aforesaid, as per the annexed account of the same herewith filed and made part of this petition. Your petitioner alledges amicable demand and want of payment of the said account.

Wherefore petitioner prays that the said Emile Tanneret may be summoned to answer this petition, and that, after all due legal proceedings had, he be condemned to pay your petitioner the aforesaid sum of four thousand nine hundred and ninety-five dollars & twenty-nine
4 cents, with interest thereon from the thirty-first December, eighteen hundred and sixty, at the rate of five per cent. per annum, until paid, with privilege and preference, and all costs of suit.

And, as in duty bound, petitioner will ever pray, &c.

(Signed) ROBERT J. KER,
Att'y for Pet'r.

Account.—Filed with petition December 21st, 1864.

No. 1.

NEW ORLEANS, *December* 14, 1864.

Mr. Emile Tanneret to Daniel Edwards, DR.

Nos. 28, 30, and 32, New Levee street—copper, tin, and sheet iron—brass-founding and pattern-making—machinery repaired—jobbing—manufacturing steam trains, clarifying and evaporating pans, filterers, juice boxes, &c.—sheet iron, tin, and brass work—cocks, gas-pipes, and fittings.

5 1860.				
March 31	2050 1 sheet iron tank, *a* 12 c'ts			246 00
"	Drayage			2 50
April 2	2 copper floats & cocks			48 00
"	2 brass wash plugs, seats, & bolts, $4 50			9 00
"	15 " copper branch and pipe to connect 2 large tanks			8 25
"	2050 " sheet-iron tanks, *a* 12c			246 00
"	Drayage			2 50
3	440 " 1 r'd S. I. tank or heater, 12c			52 80
"	70 " copper worm for same, 55c			38 50
"	29 1 brass elbow cock, 2½-inch, *a* 55			15 95
"	drilling 4 holes in same			75
"	Drayage			85
5	40 W. I. braces on worm for heater			6 00
20	4828 4 S. I. clarifyer and troughs, complete, with curbing, *a* 14c			675 92
"	4 drayages			4 00
23	7 15-in C. I. condensors, *a* $20			140 00
	Drayage			30
May 9	497 " 1 copper worm, 7 ft. 1 in. dia., *a* 60c			298 20
6 May 12	995 2 3-jet copper worms, 60c			597 00
"	2 4-in. C. I. valve cocks			70 00
"	Drayage			75
23	1952 " 4 copper worms for exhaust steam clarifiers, 9 pipes in each, 10½ ft., *a* 60c.			1,171 20
"	4 3-in. brass discharge cocks, clarifiers			60 00
"	4 brass stop-valves for do., $10			40 00
"	4 4-in. iron shell valve-cocks, Ford's, $25			100 00
	Drilling holes in same			10 00
"	4 2-in. iron shell valve-cocks, Ford, $7 50			30 00
	Drilling 32 holes in same			2 00
"	3 4-in. brass dischg. cocks, finish for pay, $25			75 00
"	3 3-in. steam valve-cocks, $75			225 00
"	3 3-in. charging, $60			180 00
"	1270 3 7½ ft. evaporating pans, 6c			762 00
"	591 copper troughs, curbing & flanges, 60c			354 60
23	3 in. brass wash plugs & seats, in pan, $3			9 00
"	2 3-in. for trough, $3			6 00
"	8 3-in. for clarifyers, $3			24 00
7 1860				
May 23	915 " 46 iron pipes and elbows, 7c			64 05
24	2 1-in. S. S. finished bibb cocks in troughs of pan, with nuts, $4 00			8 00
"	15 bolts & nuts, 3½×¼, 14c			2 10
"	16 " " 2½×¼, 12½			2 00
"	16 " " 3½×¼, 29			4 64
"	32 " " 2½×¼, 12½			4 00
"	24 finished bolts & nuts, C. I. pipe, 28c			6 72
"	10 " " " 2½×¼, 26			2 60
26	131 3-in. copper steam pipe, 12 ft., 55			72 05
"	13 cast iron flanges, 7c			91
"	30 bolts & nuts, 3½×¼, 29			8 70
"	12 " " 3×¼, 28			3 36
"	Box, 50c; drayage, 30			80
June 5	By cash	$3,500 00		
29	4 4-in. I. S. N. cocks, 25c			100 00
	Boxing, 1 50; drayage, 30			1 80
Aug. 20	By cash	$1,500 00		
Oct. 12	2 15-in. heat boxes retu., $20	40 00		
22	83 cast-iron flanges			
Nov. 12	By 7 1-in. flange retur'd, 18c	1 26		
8 1860.				
Nov. 12	7 1-in. caps, 18c			1 26
"	4 1-in. iron union coupling, 80c			3 20
"	1 1-in. sluece			18
	34 C. I. flanges, 6c			2 04
"	106 old copper, 20c			21 20
"	33 C. bolts & nuts, 3½×¼, 29			9 57

"	30	1 brass elbow cock, 50	.....	15 00
"		4 bolts & nuts, $1\frac{1}{4} \times \frac{1}{4}$, 8	.....	32
"		4 finish brass stop & valves & couplings	.....	40 00
"		4 finish 3-in. hollow plug cocks	.....	60 00
"		1 l'ge elbow steam valve cock	.....	75 00
		Amounts bro't forward	5,793 60	5,269 03
"		By 2 boxes	.....	1 00
"		1 brass fine 3-in. elbow, syrup	.....	60 60
"		36 block tin, 34c	.....	12 24
"	15	4 1-in. iron union couplings, 80c	3 20	.....
"	"	36 block tin, 34c	12 24	.....
"	"	4 bolts & nuts, $1\frac{1}{4} \times \frac{1}{4}$	32	.....
1861.				
May	31	Cash to Judge Morel, costs of court, &c	26 00	.....
			5,835 56	5,342 27
		By credits	5,342 27	.....
		To balance	$493 29	.....

9 *Account marked No. 2.*

1860.				
May	26	275″ copper steam pipe, *a* 55c	151 25	.....
		Drayage	50	.....
Aug.	16	1193 funnel end chimney, with cap & flange, 14c	167 02	.....
		Drayage	1 50	.....
	18	6 brass finished clarifying cocks, $40	240	.....
	"	6 stop valves, $10	60 00	.....
	"	11 brass wash plugs, $4 50	49 50	.....
	"	44 joint-bolts & nuts, $1\frac{1}{4} \times \frac{1}{4}$	3 52	.....
		Box, 1 75; drayage, 30c	2 05	.....
	29	1 brass sr. valve-cock for granulating pan	75	.....
	"	1 finished brass syrup cock	60	.....
		Drayage, 30c; box, $2 00	2 30	.....
	"	6 3-in. hollow plug discharge cock for clarifyers, $20	120 00	.....
	"	1 4-in. do. do. for granuating pan	25 00	.....
	"	4 $1\frac{1}{4}$-in. finished S. S. & S. blb cock for troughs of clarifyers, and with nuts, $8 50.	34 00	.....
	"	36 bolts & nuts, $1\frac{1}{4} \times \frac{1}{4}$, 8	2 88	.....
	"	36 " " $2\frac{1}{4} \times \frac{1}{4}$, 12c	4 50	.....
		Box, $2 50; drayage, 30c	2 80	.....
Sept.	1.	895 C. iron framing legs for granuating pan, 7c	62 65	.....
10	1860.			
Sept.	1	8 bolts & nuts in same, 25c	2 00	.....
	"	Drilling & cutting frame	5 00	.....
		Drayage	75	.....
	5	6 15-in. C. I. condensors, for clarifying, $25	150 00	.....
		1 15-in. " "	25	.....
		Drayage	60	.....
	6	198 feet 1-in. iron pipe, 12c	23 76	.....
	"	12 1-in. elbow, *a* 30c	3 60	.....
	12	1 sheet-iron strike bar, complete with finished brass swivel pipe, &c	225 00	.....
	14	6 copper worms for direct steam clarifying, 14 pipes each, 435″ each, 2610, *a* 60c.	1,566 00	.....
	18	5,520 sheet-iron clarifiers, 14c	772 80	.....
	"	560 1 copper grauuating pan, 60c	348 00	.....
	"	499 1 3 jet copper worm for same, 60c	299 40	.....
		Hauling	4 00	.....
	20	10 1-in. iron union couplings, 80c	8 00	.....
	"	75 bolts & nuts $1\frac{1}{4} \times \frac{1}{4}$, 8	6 00	.....
	"	24 " " $3 \times \frac{1}{4}$, 13c	3 12	.....
	"	32 " " $3\frac{1}{4} \times \frac{1}{4}$, 14c	4 48	.....
	"	4 1-in. elbow	1 20	.....
	"	2 W. I. wrenchers for worms, $4 & $3	7 00	.....
11	1860.			
Sept.	20	30 iron rivets, 15c	4 50	.....
	"	1 pair bench shears	10 00	.....
	"	1 hatchet brace	4 00	.....
	"	2 cast-steel drills	2 00	.....
	"	3 " " chisels	3 00	.....
	"	2 " " punchers	1 00	.....
	"	1 14 in. half-round bastard file	1 00	.....
	"	2 bench tools	5 00	.....
	"	1 iron head	1 75	.....
	"	1 box, $1 50; drayage, 30c	1 80	.....
	"	5 washers, 20c	1 00	.....
	"	1 pair 1$\frac{1}{4}$ gas tongs	3 50	.....
	"	149 C. I. pipes for clarifyers, 7c	10 43	.....
		Drilling and fitting same	6 00	.....
		Drayage	30	.....

	21	1 small set stocks & dies	7 00	
	"	6 1-in. elbow, 30c	1 80	
	"	10 1-in. nippies, 18c	1 80	
	22	312″ copper steam pipe for direct steam clarifiers, 55c	171 60	
	"	103 C. I. flanges on same, 7c	7 21	
	"	102 copper syrup pipe for same, 55c	56 10	
	"	69 C. I. flanges on same, 7c	4 83	
		Drayage	30	
Oct.	13	130 W. iron for pans, 4c	5 20	
	"	70″ sheet copper, 34c	23 80	
12	1860.			
Oct.	13	186 3-in. steam & syrup pipe, 55c	102 30	
	"	18 in. rubber packing, 65c	11 70	
	"	15 sacks charcoal	15 00	
	"	22 spelter solder, 50c	11 00	
	"	4″ borax, 40c	1 60	
	"	1 2½ wrought iron tool, 72″, 12c	8 64	
	"	24 red lead, 10c	2 40	
	"	1 5-in. C. I. stop-valve	60	
	"	1 pair brand bellows	5 00	
		Keg, 50c; drayage, 30c	80	
	17	131 copper elbow pipe, 55c	72 05	
	18	50 ft. 5-in. copper steam pipe, 321″, 55c	176 55	
	"	1 barrel rosin	3 00	
		Drayage	30	
	"	4 cop. flanges and sleeves for 5-in. pipe, 15″, 55c	8 25	
	"	2 soldering irons, $1 50	3 00	
	"	2 draw setts, 1 00; 2 button setts, 1 00	2 00	
	"	1 hack saw	2 50	
	"	1 bumping hammer	2 00	
		Drayage	30	
	"	2 p'r C. I. flanges for 5-in. sr. pipe, 70, 7c	4 90	
13	1860.			
Oct.	18	24 bolts & nuts, 3½×½, 29c	6 96	
	"	24 " " 4 ×½, 30c	7 20	
	"	1 pair hand bellows	5 00	
	19	1 large copper oil feeder	3 00	
	"	1 med'm brass " "	90	
	"	1 large copper oil can	3 00	
	"	1 copper funnel	1 00	
	"	1 cast-i. flange for I. S. stop valve 25 , 7c	1 75	
	"	1 copper flange & sleeves in do., 55c	2 75	
	22	83″ cast-iron flanges, 7c	5 81	
	"	4 bolts and nuts, 4 ×½, 15c	60	
	"	4 " " 3½×½, 14c	56	
	"	4 " " 3 ×½, 13c	52	
	"	2 borax, 40c	80	
	"	½ ground emery	05	
	"	25 bolts and nuts, 5×½, 20c	5 00	
	"	12 " " " 2×½, 8c	96	
	"	1 3-in. steam valve cock	75 00	
	"	1 3-in. charging cock	60 00	
	24	6 3-in. finished brass discharge cocks, $20	120	
	"	101 2½ syrup pipe, with funnel mouth, a 60c	60 60	
	"	340 3½ gand juice pipe from pump to clarifier, 60c	204	
14	1860.			
Oct.	24	81″ cast-iron flanges, 7c	5 67	
	"	4 pair 3½ brass hose couplings, in pipe, $4 25	18 00	
	25	1 ½-in. tap for gas pipe	2 00	
	"	21 brass flanges for syrup cock, 60c	12 60	
	27	36 3-in. drawn copper pipe, 55	19 80	
	"	92 ft. 1½ pipe, 22c	20 24	
	"	9 ft. 1½ ties, 75c	6 75	
	"	6 1½ elbows, 60c	3 60	
	"	10 1½ brass bib cocks, screw shape, & shoulders	60 00	
	"	Putting pipes & threads, & fitting same	10 00	
	"	134 4-in. copper pipe from flange to tank, 60c	80 40	
	"	1 sheet gasgnet paper	1 00	
	"	12½ I. R. packing, 60c	7 50	
	"	1 small cock	1 25	
	"	1 1½ iron union coup. on iron pipe	1 40	
	31	219 3-in. copper steam pipe, 55c	120 45	
	"	70″ C. I. flanges	4 90	
	"	147 3½ copper steam pipe, 55c	80 85	
	"	15 bolts & nuts, 3½×½, 14	2 10	
		Drayage	30	
Nov.	1	31″ copper pipe, 55c	17 05	
		19 C. I. flanges, 7	1 33	
15	1860.			
Nov.	1	2 bolts & nuts, 14c	28	
		Drayage	30	
	3	1 3-in. finish brass elbow syrup cock	60	
	"	24″ 1½ copper pipe, 55c	13 20	
	"	14″ C. I. flanges, 7c	98	
	"	50 4-in copper pipe, 55c	27 50	
		Drayage	30	
	"	104″ 45 ft. 2½ copper pipe, 55	57 20	

	"	44″ C. I. flanges, 7c	3 08	
	"	65 1 4½ copper pipe, 60c	39	
	"	2 3½ brass stop cocks in do., $25	50	
	"	20″ cast iron flanges on same, 7c	1 40	
	"	5 bolts & nuts, 3½×½, 14c	70	
		Drayage	30	
	5	75 feet 1-in. iron pipe, 12	9 00	
	"	15″ 1-in. elbow, 30c	4 50	
	"	1 1½ union coupling	1 40	
	"	1 brass flange, 17″, at 45c	7 65	
	"	32″ cast-iron flanges, 7c	2 24	
	"	20 ft. 1½-in. gas pipe, 22c	4 40	
	"	Cutting same, & 4 threads on same	2 00	
	"	14 days' work, Mr. Butler, on plantation, $4 00	56	
	"	14 days, Casey, $3 00	42	
	"	Expenses to & fro	10	
	"	8″ spelter solder	4 00	
	"	4″ borax	1 60	
16	1860.			
Nov.	5	75″ copper pipe & strainer, 60c	45	
	"	22 C. I flanges on same, 7c	1 54	
		Drayage	30	
	10	1 copper casing for steam chimney	48 50	
		Drayage	30	
	12	158 feet 1-in. iron pipe, 12c	18 96	
	"	1 1st quality Askcroft's steam g'uge	27 50	
	"	48 feet ½ gas pipe, 9c	4 32	
	"	2 1-in. brass bib screw, shank, & shoulder	8 00	
	"	1 1½ " " " " "	5 00	
	"	1 2-in. tie	1 00	
	"	1 1½ "	75	
	"	3 1½ elbows, 60c	1 80	
	"	1 2-in. "	80	
	"	2 1-in. "	60	
	"	1 2-in. bushing	50	
	"	2 1½-in. "	80	
	12	17 ft. 2-in. iron pipe, 40c	6 80	
	"	28 " 1½ " " 22	6 16	
	"	102 3-in. copper pipe, 55	56 10	
	"	22 cast-iron flanges, 7	1 54	
		Drayage	40	
		Credit :		
	"	By 1 draw sett returned		50
		" 2 buttons "		1 00
		" 1 hack-saw "		2 50
		" 1 bumping hammer		2 00
17	1860.			
Nov.	12	To 27 ft. 2-in. iron pipe, 36c	9 72	
	15	" 50 ft. 1½ 3-ply L. R. hose, 35	17 50	
	"	5½ 1½-in. brass hose coupling, 1 25	6 25	
	"	4 copper hose pipes, 3 00	12 00	
	"	1 brass hose pipe & cock	5 50	
	"	15 bolts & nuts, 3½×½, 14c	2 10	
	"	18 " " 2½×½, 12½	2 25	
	"	1 1½ L union coupling	1 40	
	"	2 1-in. elbow	60	
	"	1 C. I. flange, 8×2	1 75	
	"	Drilling 4 holes in same	40	
	"	Lashing couplings to hose, & copper wire	5 00	
	"	1 tin wipple	45	
	"	272″ copper sucsion and discharge pipe for small engine, 55	149 60	
	"	47″ C. I. flanges, 7	3 29	
	"	Boxing, 1 00; 3 drayages, 30c., 90	1 90	
		Credit :		
		By 4 1-in. L union coupling, 80		3 20
		" 36″ block tin, 34c		12 24
		" 4 bolts & nuts, 1½×½		32
Decm.	3	To 1 2, 1½ reducer	45	
	"	1 1½ tap	1 00	
	"	2 sacks charcoal, $2 00; drayage, 25	2 24	
Nov.	30	By cash		3, 000 00
		Amounts carried forward	7, 250 15	3, 021 76
18	1860.			
Decm.	31	Amt's brought forward	7, 250 15	3, 021 76
	"	34 days' time of C. Valentine, $5	170	
	"	21 " " P. Sheehan, 4	84	
	"	4 days' time of C. Valentine going and coming from plantation, $5	20	
	"	Expenses to & fro	11	
	"	By 1 ratchit-brace, returned		4 00
	"	2 C. I. drills, "		2 00
	"	2 C. I. chisels, "		3 00
	"	2 C. I. punchers, "		1 00
	"	2 bench tools, "		5 00

"	1 iron head, "			1 75
"	1 pair gas-tongs, "			3 50
"	1 sett stocks & anss, "			7 00
	1 2½ C. I. tool, 72c. 12c			8 64
"	1 draw sett			50
"	2 pair hand-bellows			10 00
"	1 1¼ tap			1 00
1861.				
May 31	Cost of suit No. 2727, 7th district court		26	
"	J. P. Horner, att'y, taking testimony		10	
			$7,571 15	3,069 15
	By credit		3,069 15	
	To balance		4,502 00	
	To amount bill attached		493 29	
			$4,995 29	

19 *Citation of Emile Tanneret.*

The President of the United States of America to the United States provisional marshall for the State of Louisiana, greeting:

You are hereby commanded to summon Emile Tanneret, a citizen of the State of Louisiana, to comply with the demand of Daniel Edwards, citizen of the State of Lousiana, contained in the petition, of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the provisional court for the State of Louisiana, holding session in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and
20 that you make due return hereof according to law.

Witness the Honorable Charles A. Peabody, judge of the said court, at the city of New Orleans, this 21st day of December, A. D. one thousand eight hundred and sixty-five.

(Signed) JOHN T. PEABODY, *Clerk.*

Marshal's return of service.

Received this 21st day of December, 1865, and on the 9th day of March, 1865, served copies of the within citation, plaintiff's petition, on the within-named defendant, in the manner following, to wit: by leaving the same at his domicil on "False River," in the parish of Point Coupee, in the hands of Mrs. Francois Dormeno, a free person, apparently over the age of 14 years, living and residing in said domicil, and whose name and other facts connected with this service I learned by interrogating her; said Emile Tanneret, the defendant, being absent from home at the time of said service.

(Signed) JOHN H. BUKUP,
21 *Special Deputy Marshall.*

I hereby depute John H. Bukup as special deputy marshal to serve the within citation and petition.

Dated March 1st, 1865.

(Signed) ALMON EAYRE,
Deputy Marshal.

Testimony taken under commission.—Filed 23 Decem., 1868.

The State of Louisiana, seventh district court, for the parish of Pointe Coupee, to Ernest Morel, fourth justice of the peace for the parish of Orleans, State of Louisiana, greeting:

Know ye that we, reposing confidence in your prudence and fidelity, do, by these presents, give unto you authority to examine Charles Valentine, John M. Benson, Patrick Button, Paul Shean, William King, and others, in a certain suit now pending in our court, in which
22 Daniel Edwards is plaintiff, and Emile Tanneret is defendant, on the part of said plaintiff. Therefore we desire you, at certain times and places by you to be appointed for that purpose, to cause the said witnesses to come before you. that you then and there examine them upon their oath first taken before you upon the Holy Evangelists; that you reduce the said examinations to writing, and when you shall so have taken the same you send it closed up under your seal to us in our said court at the court-house, in the parish of Pointe Coupee, on or before the 3d Monday of June, 1861. And have you then and there this writ.

Witness the Honorable A. D. M. Haralson, judge of said court, this 15th day of April, A. D. 1861.

(Signed) C. W. BOUANCHAUD,
D'y Clerk.

23 *Interrogatories.*

Seventh district court, parish of Pointe Coupee.

DANIEL EDWARDS
vs. } No. 2727.
EMILE TANNERET.

Interrogatories to be propounded to Charles Valentine, John M. Benson, Patrick Button, Paul Shean, William King, and others, the answers to which will be used upon the trial of the above-entitled cause as evidence on the part of the plaintiff.

Interrogatory 1st. Are you or not acquainted with the parties to this suit?

Interrogatory 2d. What is your occupation, and how long have you been so employed?

Interrogatory 3d. Please examine the accounts marked 1 and
24 2, annexed, (accounts marked 1 & 2, & referred to in the foregoing direct interrogatory, to be found transcribed at pages 4 & 9,) and state whether or not they are correct. Was or was not all the pans, clarifiers, cocks, valves, pipes, &c., charged in said account sold and delivered to the defendant, and were they or not worth the prices therein charged?

Interrogatory 4th. Was or was not all of said machinery apparatus put up in good running order on the plantation of the defendant? If yea, please state by whom the mechanical labor was performed. Was it or not done by one or more of you?

Interrogatory 5th. Did or did not the defendant express himself to you and others as being perfectly satisfied and pleased at the entire machinery and its performances?

Interrogatory 6th. Was or was not the mechanical work neces-

25 sary to put the apparatus in running condition well executed, and was or was not the labor and services well worth the prices charged in said accounts?

Interrogatory 7th. Was or was not all the machinery, pipes, &c., charged in account marked "1," delivered to the defendant on his plantation, and was or was not the same put up?

Interrogatory 8th. If you state that the machinery and apparatus charged in Ac. 1 was not put up in running condition, please state why it was not put up. Was it or not because the defendant changed his plans, and determined to have six clarifiers instead of four, as first agreed upon?

Interrogatory 9th. After receiving and putting up the six clarifiers and fixtures thereto, what became of the first four clarifiers sold
26 the defendant? Did he or not return them to the plaintiff?

Interrogatory 10th. Did or did not the defendant keep the four clarifiers referred to, and appropriate them to useful purposes? If not, what did he use them for?

Interrogatory 11th. Did or did not the new set of six clarifiers require different valves, cocks, and pipes, or did you use those furnished with the first four clarifiers; and if the same were not used, what became of them?

Interrogatory 12th. Did or did not the defendant make several payments on said accounts?

Interrogatory 13th. If you state that payments were made by the defendant, state whether or not he expressed any dissatisfaction with the account or the machinery. On the contrary, did he or not express himself perfectly satisfied?

27 Interrogatory 14th. Please state any other facts within your personal knowledge that will assist the plaintiff in making out his case as specially as if specially interrogated thereto?

(Signed) COLLINS & LEAKE, *Att'ys.*

Endorsed: 2727. D. Edwards vs. Emile Tenneret. Interrogatories, filed March 23d, 1861, "C. W. Bouanchaud," d'y cl'k.

Sheriff's return.

Received on the 27th March, 1861, and served on the 3d of April of the same year, a copy of the within interrogatories on Emile Tanneret in person.

Pointe Coupee, April 4th, 1861.

(Signed) M. BASSI, *D'y Sh'ff.*

A true copy:

(Signed) C. W. BOUANCHAUD, *D'y Cl'k.*

Cross-interrogatories.

Seventh district court, parish Pointe Coupee.

28 D. EDWARDS
vs.
EMILE TANNERET. } Cross-interrogatories.

The defendant first objects to all verbal proof of the contract between these parties on the ground that the contract was in writing, and propounds the following cross-interrogatories to all the witnesses:

1st. State, each one of you, how long you have been in the employ of plaintiff, and in what capacity?

2d. If you answer the 3d interrogatory of the plaintiff in the affirmative, please state when was the contract therein referred to entered into between the parties. Were you present at the time? Were the articles in the accounts annexed specified in said contract? Were the prices mentioned? Was the defendant in New Orleans at the time of said contract? Were you also in New Orleans at that time?

29 3rd. If you answer the 8th interrogatory in the affirmative, please state what were the changes made in the original contract, and at whose suggestion they were made.

4th. If you answer the 12th interrogatory in the affirmative, please state how you know that such payments were made, and state also if the payments were imputed to any particular item or items, or any particular account.

5th. Do you know when the accounts sued on were presented to defendant? Did you not demand payment yourself for plaintiff from the defendant? Did not the son of plaintiff afterwards present the same accounts to defendant for payment? At the time of these two demands were the accounts,—if not, why were they not paid? State particularly the answers of defendant to you and to the son of plaintiff when said demands were made.

30 6th. When was the work commenced to put up the apparatus furnished by plaintiff on defendant's plantation? When was it furnished?

(Signed) A. PROVOSLY & T. J. & W. H. COOLEY,
Att'ys.

Cross-interrogatories endorsed:

2727. Edwards vs. E. Tanneret. Cross-interrogatories of defendant to Valentine & others. Filed April 6, 1861. Signed H. Didier, d'y cl'k.

A true copy:
(Signed) C. W. BOUANCHAUD,
D'y Cl'k.

THE STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

DANIEL EDWARDS
vs.
EMILE TANNERET. } No. 2727.

Seventh district court for the parish of Pointe Coupee, State of Louisiana.

31 Deposition of following witnesses, taken and subscribed before me, Ernest Morel, fourth justice of the peace for the parish of Orleans, in the State of Louisiana, duly elected, sworn, commissioned, and acting as such, on the 29th day of May, A. D. eighteen hundred and sixty-one, at 5 o'clock p. m. of said day, at my office, No. 35 St. Peter street, in the city of New Orleans, in the parish of Orleans, in the State of Louisiana, in pursuance of a commission hereto annexed, and to be read as evidence in a certain cause now pending in the seventh district court for the parish of Pointe Coupee, State of Louisiana, wherein Daniel Edwards is plaintiff, and Emile Tanneret is defendant, on the part of the pl'ff.

JOHN M. BENSON, a witness known to me to be of lawful age, being

to me at the time and place aforesaid produced, and being by me first duly sworn upon the Holy Evangelists, and according to law, to testify to the truth, the whole truth, and nothing but the truth, in re-
32 gard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, depose and say and answer as follows, to wit:

1st. To the first interrogatory deponent says that he is acquainted with both parties in the suit.

2d. To the second interrogatory deponent says that he is a book-keeper by profession, and has been so engaged for upwards of two years; and part of that time deponent says that he has been in the employ of Daniel Edwards, and as such has called on Mr. Tanneret on his plantation on December the 19th, 1860, for a settlement, after having written several letters to that effect to Mr. Tanneret, and no answers having been given.

3d. To the third interrogatory deponent says that, after a careful examination of said accounts hereto annexed, he finds them to be
33 correct, and knows that all the pans, clarifiers, valves, pipes, &c., charged in said ac'ts, to have been sold and delivered to the defendant, and are fully worth the prices therein charged. Deponent has himself seen, the major part of the articles charged, on Mr. Tanneret's plantation.

4th. To the fourth interrogatory deponent says that the machinery apparatus was put in good running order on the plantation of the defendant. The mechanical labor was performed by Mr. C. Valentine with his assistants, Mess. Butler, Sheerin, & als. Deponent says that he personally had nothing to do with erection.

5th. To the fifth interrogatory deponent says yes. Mr. Tanneret so expressed himself to deponent more than once.

6th. To the sixth interrogatory deponent says yes; the work was well done, and was well and fully worth prices charged in said accounts.

34 7th. To the seventh interrogatory deponent says that [that] he saw the major part charged in ac. marked "1" on the plantation of defendant and put up, and the balance laid aside by the orders of defendant.

8th. To the eight interrogatory deponent says that the part that was laid aside by defendant's orders on ac. of defendant having set aside his plans, and determined to have six clarifiers instead of four, as it was firstly agreed upon.

9th. To the ninth interrogatory deponent says that he did not return them to plaintiff, and kept them on his plantation, two of which deponent saw used on the plantation—one as a water-tank and another one as a cane-juice receiver.

35 10th. To the tenth interrogatory deponent says that he refers to interrogatory No. 9, already answered.

11th. To the eleventh deponent says they did require different valves, cocks, and pipes, and does not know what became of the valves, cocks, pipes, &c., that came with the first four clarifiers, except as answered in interrogatory No. 9, and except what were returned, for which credit was given at the prices originally charged, as will appear by the account.

12th. To the twelfth interrogatory deponent says that he has made several payments on said ac'ts, as will appear, and have been credited on said ac's.

13th. To the thirteenth interrogatory deponent says that he was never

present when payments were made, but has heard Mr. Tanneret express his satisfaction of the work on his plantation.

36 14th. To the fourteenth interrogatory deponent says that he believes the bill which is sued upon to be correct, and, during the time deponent has been in plaintiff's employ, he has never known him to have charged more than was really owing to him. Deponent states that plaintiff was always correct in his accounts.

Cross-examination:

1st. To the first cross-question deponent says that he has been in plaintiff's employ during about eight months; deponent thinks it was from the month of June, 1860, to February, 1861.

2d. To the second interrogatory deponent says there is no contract mentioned in the third interrogatory. Deponent has seen a proposition in writing of Mr. Edwards, proposing to furnish a certain amount of work for the sum of fifty-one hundred and fifty dollars, signed by Dan-

37 iel Edwards and witnessed by George W. Cope. Deponent says that Mr. Tanneret's signature was not affixed to the document when he saw it on his plantation on the 19th day of December, 1860, and this was after the work in ac'ts one and two was completed. The written proposition referred only to articles mentioned in bill No. 1. Deponent says that, after the articles mentioned in bill No. 1 were delivered on def't's plantation, the articles on bill No. 2 were ordered by defendant through Mr. Valentine. Deponent says that at the time this written proposition was made he was not then in pl'ff's employ.

3d. To the third interrogatory deponent says that he refers to the 7th and 8th direct interrogatories and his answers thereto.

4th. To the fourth cross-interrogatory deponent says that he was never present when the payments were made; but the payments

38 were imputed in Mr. Edwards' book the same as specified in bills annexed.

5th. To the fifth interrogatory deponent says that he presented similar bills, but not in detail, to Mr. Tanneret on his plantation, on the 19th December, 1860, and demanded payment. Deponent does not know whether the son of pl'ff presented the same ac'ts for payment. Deponent says that at the time he demanded payment there was nothing paid to him then. Deponent says that when he demanded payment from defendant, defendant told deponent that he had on his plantation more work than he wanted. Deponent further states that he did not present the bill on his first going up to defendant's plantation, but waited there for a day and a half or more to see that the work was well put up, and operated satisfactorily before presenting said bill; and def't expressed himself perfectly satisfied with the work before

39 the bill was presented; but when the bill was presented defendant would not make any intelligible or direct reply, stating that he purposed employing an engineer to point out and examine the work in detail. Deponent then offered to take the bills, and point out each article charged on the bills, in order to show defendant that all the work charged in said bills had been delivered and put up on his plantation.

6th. To the sixth cross-interrogatory deponent says that he cannot specify the date the work was commenced of his own knowledge, but knows that it was finished about the 18th of December, 1860, and delivered.

(Signed) JOHN M. BENSON.

Sworn to and subscribed before me this 29th day of May, 1861.

(Signed) ERNEST MOREL, *4th J. P.*

40 CHARLES VALENTINE, a witness on the part of pl'ff, being duly sworn on the Holy Evangelists, did, at the hour of half past six o'clock p. m., at my office, No. 35 St. Peter street, on the twenty-ninth day of May, eighteen hundred and sixty-one, in the suit of Daniel Edwards vs. Emile Tanneret, No. 2727 of the docket of the 7th district court, of the parish of Pointe Coupee, depose and say:

1st. To the first interrogatory deponent, Cha's Valentine, says that he is acquainted with the parties to this suit.

2d. To the second interrogatory deponent says that he is an engineer by profession, and has been so engaged for upwards of twenty-one years, and has been superintending the putting up of machinery on sugar plantations for fifteen years.

41 3d. To the third interrogatory deponent says that they are correct, and that all the pans, clarifiers, cocks, valves, pipes, &c., charged in said accounts were sold and delivered to the def't, and are fully worth the prices therein charged. All the work in ac. No. 2 was ordered through deponent, after consultation, and with orders of Mr. Tanneret.

4th. To the fourth interrogatory deponent says that all the work in bills Nos. 1 and 2 was put up in good running order on the plantation of the defendant, except the four clarifiers first ordered and first mentioned in the bills, one of which was put up as a water-tank, and the other as a cane-juice receiver; the two others were laid aside, and not put up, by special direction of Mr. Tanneret. The job was well performed as any other job deponent has ever saw, and was put up

42 as well as possibly could be. The mechanical labor was performed by deponent, assisted by Butler and Sheean and Casey.

5th. To the fifth interrogatory deponent says that, yes, he so expressed himself on various occasions, and stated to deponent that he had the best train and nicest finished of any in the country; he so stated, not only when the machinery was being put up and completed, but while it was in full operation, taking off his crop.

6th. To the sixth interrogatory deponent says that the mechanical work necessary to put the apparatus in running condition, well executed, and the labor and services were well worth the prices charged in said ac'ts.

7th. To the seventh deponent says all the machinery, pipes,

43 &c., charged in ac. marked "1" were delivered to the defendant on his plantation, and they were all put up except the two clarifiers already mentioned, and sundry cocks, valves, &c., which were returned to pl'ff, and for which credit is given at the same rate for which the articles were charged, as appears by the two bills annexed and marked "1" and "2."

8th. To the eight interrogatory deponent says that the four clarifiers mentioned in bill No. 1 were not put up, because defendant changed his mind and determined to have six clarifiers instead of four, as first ordered by him. When deponent first went up to locate the house for the machinery, the machinery mentioned in bill No. 1 was all on the place. The defendant changed his mind, and ordered, through deponent, six

44 clarifiers, one copper granulating-pan, sheet-iron steam chimbly, one iron strike box and their appurtenances, in place of the four clarifiers previously ordered. At that time defendant intended to use the four shells of the first four clarifiers for cane juice and water-tanks. When deponent went up the second time def't again changed his mind, and determined to use only two of the first four clarifiers, one for a water-tank, and the other for a juice-receiver; and to lay aside the other two altogether, still retaining them on his plantation.

9th. To the ninth interrogatory deponent says that he has already answered this question in the previous interrogatory. And, further answering, deponent says that he did not return them to the plaintiff, and never expressed an intention to do so.

45 10th. To the tenth interrogatory deponent says that he did keep the clarifiers, and used them as already stated.

11th. To the eleventh interrogatory deponent says that the new set of six clarifiers did require different cocks, valves, and pipes, &c., but deponent did use what he could of those furnished with the first four; those that were not used were returned to pl'ff and credited, as before stated.

12. To the twelfth interrogatory deponent says that he made one, to deponent's knowledge, of the amount of three thousand dollars.

13th. To the thirteenth interrogatory deponent says that, at the time the payment above referred to was made, defendant did not say anything; deponent says he expressed himself several times perfectly satisfied with the work and its operation.

46 14th. To the fourteenth interrogatory deponent says that defendant requested to deponent to write to Mr. Edwards, asking Mr. Edwards what he would give defendant for the first four clarifiers; deponent spoke to Mr. Edwards about it, but he refused to buy them back; defendant also requested deponent to buy them himself, or to sell them for defendant, and deponent, in accordance with def't's instructions, offered them to Mr. A. Denis for five hundred dollars apiece, and deponent almost completed the sale.

Cross-examined:

1st. To the first cross-interrogatory deponent says that he has been in pl'ff's employ for upwards of six or seven years in superintending the erection of machinery, steam-train, &c.

47 2d. To the second interrogatory deponent says that there was no contract mentioned in said interrogatory. Deponent says Mr. Tanneret showed him a letter from plaintiff, in which pl'ff made certain propositions to furnish certain machinery, such as detailed in bill No. 1, at fifty-one hundred and fifty dollars; this was signed by Daniel Edwards, and witnessed by George W. Cope, but it was not signed by Mr. Tanneret. Deponent says he does not recollect the date, does not know when it was executed, or whether the def't was in New Orleans at that time, or whether deponent himself was in New Orleans.

3rd. To the third interrogatory deponent says that the changes were made, as already specified in deponent's direct examinations, by the instructions and directions of Mr. Tanneret.

4th. To the fourth cross-interrogatory deponent says that the
48 payment of three thousand dollars mentioned in his direct examination was made in deponent's presence, and on the plantation of Mr. Tanneret. Deponent says that defendant did not pay it as to any portion of the bill but in part payment of the whole ac. Deponent does not know how the pl'ff charged it on his books except as he sees it on the bill No. 2.

5th. To the fifth cross-interrogatory deponent says that he does not know the date when the ac's sued on were presented for payment, but saw Mr. Benson present them some time in December. Deponent says he did demand payment for pl'ff to defendant before Mr. Benson presented them. Deponent does not know whether the son of pl'ff ever presented them for payment. When deponent demanded the
49 payment it was not paid; neither was it paid when Mr. Benson

demanded the payment. Deponent says that when he presented the bill the defendant answered that he was short of money at that time, and that Mr. Edwards would have to wait three or four weeks before he could pay the bill; he did not object to the amount of the bill, but he said there was a good many bolts mentioned in said bill that he could not use. Deponent here states that there were about three hundred bolts used in this work that were and are not changed in these two acts.

6. To the sixth interrogatory deponent says the work was commenced some time in the month of September, 1860, and was finished some time about the first of December 1860.

(Signed) CHARLES VALENTINE.

Sworn to & subscribed before me this 29th day of May, 1861.

(Signed) ERNEST MOREL, *4th J. P.*

50 Deposition of PAUL SHEAN, a witness on the part of pl'ff, known to me to be of lawful age, being to me at the time, and place of New Orleans, this twenty-ninth day of May, 1861, produced, and being by me first duly sworn upon the Holy Evangelists and according to law to testify to the truth and nothing but the truth, did, on said date, at the hour of half past seven o'clock p. m., depose and say:

1st. To the first interrogatory Paul Sheean, deponent, says that he is acquainted with both parties herein.

2d. To the second he says that he is a coppersmith by trade for very nearly seven years.

3d. To the third interrogatory deponent says that, at the date mentioned in these bills, the price for copper work was at sixty cents
51 per lb., and does not know anything in regard to the prices of the other items. Deponent does not know anything about the selling and delivery of the articles, but knows that they were there on defendant's plantation.

4th. To the fourth deponent says that he was not there when the machinery was completed and running. He assisted in putting up the copper work, and knows that was well done. The mechanical labour was performed by deponent, Messrs Valentine, Butler, and Casey, under the superintendence of Mr. Valentine.

5th. To the fifth deponent says that he never had any conversation with him in that respect.

6th. To the sixth deponent says that to the best of his knowledge it was.

7th. To the seventh deponent says that he saw the four clarifi-
52 ers and copper worms on the plantation, but they were not put up when he left the plantation.

8th. To the eight deponent says that he does not know anything about it, except that he assisted in putting up six clarifiers, and saw four on the plantation not in use.

9th. To the ninth he says that he does not know anything further than that when he left the plantation he saw them there.

10th. To the tenth interrogatory deponent says that he knows that he kept them, as already stated, but does not know what he used them for.

11th. To the eleventh interrogatory deponent says that the six clarifiars required different valves, pipes, and cocks. Deponent don't know what became of the others.

53 12th. To the twelfth interrogatory deponent says he does not know.

13th. To the thirteenth interrogatory deponent says he does not know anything about that.

14th. To the fourteenth deponent says that he went to the plantation, and there worked under the supervision of Mr. Valentine for three weeks, as a coppersmith, and that that work was well done.

Cross examination:

1st. To the first cross-question deponent says he has been in plaintiff's employ since about four years, in the capacity of coppersmith.

2d. To the second deponent says that he does not know anything about the matters set forth in this x-interrogatory.

3d. To the third x-interrogatory deponent says that he does
54 not know anything about the matters set forth in this interrogatory.

4th. To the fourth he says he knows nothing about the fact.

5th. To the fifth deponent says he cannot answer, because he does not know anything about all that.

6th. To the sixth deponent says that he does not know when the work was commenced, neither when it was finished, but he was there in November, 1860.

(Signed) PAUL SHEAN.

Sworn to & subscribed before me this 29th day of May, 1861.

(Signed) ERNEST MOREL, *4th J. P.*

Deposition of PATRICK BUTLER, a witness on the part of plaintiff, known to me to be of lawful age, being to me produced, and be-
55 ing by me first duly sworn upon the Holy Evangelists, and according to law, to testify to the truth, the whole truth, and nothing but the truth, in regard to the matters in controversy in the suit aforesaid, did then and there, on his oath aforesaid, at my office, No. 35 St. Peter street, at the hour of 8¼ o'clock p. m., this twenty-ninth day of May, eighteen hundred and sixty-one, depose and say and answer as follows:

1st. To the first interrogatory deponent, Patrick Butler, says that he is well acquainted with both parties.

2d. To the second deponent says he is a coppersmith since about seven or eight years.

3d. To the third deponent says that at the dates mentioned in said ac'ts the price for copper work was sixty cents per lb., and does not know anything in regard to the prices of the other items, nor
56 about the selling and delivery of the articles; but knows that they were there on defendant's plantation.

4th. To the fourth deponent says that he was not there when the machinery was completed and running. He assisted in putting up the copper work, and knows that was well done. The mechanical labor was performed by deponent, Paul Shean, & Casey, under the superintendance of Mr. Valentine.

5th. To the fifth deponent says that he did not.

6th. To the sixth he says that, to the best of his knowledge, it was.

7th. To the seventh he says that he saw the four clarifiers and copper worms on the plantation, but they were not put up when he left.

8th. To the eight deponent says that he does not know any-
57 thing about it, except that he assisted in putting up six clarifiers, and saw four on the plantation not in use.

9th. To the ninth he says that he does not know anything further than that when he left the plantation, after completing the six clarifiers, he saw the four clarifiers there.

10th. To the tenth deponent says that he did keep them, but does not know what he used them for.

11th. To the eleventh deponent says that the six clarifiers required different cocks, valves, & pipes, and does not know what became of the others.

12th. To the twelfth he says he does not know.

13th. To the thirteenth deponent says he does not know anything about that.

14th. To the fourteenth deponent says that he went up to the
58 plantation of Mr. Tanneret, and there worked under the superintendance of Mr. Valentine as a coppersmith for two months, and that the work he worked on was well done.

Cross-examined:

1st. To the first x-question he says that he has been since about eight years in the employ of plaintiff as a coppersmith.

2nd. To the second x-interrogatory deponent says he does not know anything about the matters in that interrogatory.

3rd. To the third cross-question he says he does not know anything about that.

4th. To the fourth cross-interrogatory deponent says he does not know anything about that.

5th. To the fifth cross-interrogatory deponent says that he does not know anything about that.

59 6th. To the sixth cross-question deponent says he does not know when the work was commenced or when it was finished, but that he worked there in the month of November.

(Signed) PATRICK BUTLER.

Sworn to and subscribed before me 29th day of May, 1861.

(Signed) ERNEST MOREL, *4th J. P.*

The other witnesses being out of town, the plaintiff herein instructed me to close the commission with said testimonies as above given and taken down by me.

(Signed) ERNEST MOREL, *4th J. P.*

THE STATE OF LOUISIANA,

Parish of Orleans, City of New Orleans:

I, Ernest Morel, fourth justice of the peace for the parish of Orleans, duly elected, sworn, commissioned, and acting as such in and for
60 the city of New Orleans, in the parish of Orleans, in the State of Louisiana, do hereby certify and make known that the foregoing depositions of John W. Benson, Charles Valentine, Patrick Butler, & Paul Shean were taken before me on the 29th day of May, A. D. eighteen hundred and sixty-one, at the time and place in the caption hereof mentioned; that the examinations, responses, and statements of said deponents were reduced to writing by me, and by the said deponent sworn to and subscribed in my presence at the time and place aforesaid.

In testimony whereof I, Ernest Morel, fourth justice of the peace for the parish of Orleans aforesaid, do hereunto set my hand at New Orleans, in the State of Louisiana, this 29th day of May, A. D. eighteen

hundred and sixty-one. (The law does not require that I should use a seal of office.)

(Signed) ERNEST MOREL,
Fourth Justice of the Peace for the Parish of Orleans.

61 *Costs.*

Commissioner's fees	$25 00
Certificate	
Constable's fees, notices, & subp's	1 00
Paid postage	
Paid by pl'ff, D. Edwards	$26 00

Judgment by default.

Saturday, April 8th, 1865.

DANIEL EDWARDS *vs.* EMILE TANNERET. } No. 448.

On motion of R. J. Kerr, att'y for pl'ff, it is ordered that judgment by default be entered herein.

Note of evidence.—Filed 17th April, 1865.

EDWARDS *vs.* TANNERET. } No. 448.

U. S. prov'l court.

62 Plaintiff offers in evidence the testimony taken and filed in the proceedings of suit in parish of Pointe Coupee, marked A, (to be found transcribed at page 30.)

Judgment.

MONDAY, *April 17th*, 1865.

Present, Hon. Cha's A. Peabody, judge.

DANIEL EDWARDS *vs.* E. TANNERET. } No. 448.

This case was taken up and submitted by consent—R. J. Ker for pl'ff; def't not represented—when, after hearing pleadings and evidence, it is ordered, adjudged, and decreed that the judgment by default herein entered on the 8th instant be now confirmed, and that pl'ff, Daniel Edwards, do have and recover from defendant, Emile Tanneret, the
63 sum of four thousand nine hundred and ninety-five dollars $\frac{29}{100}$, with interest from thirty-first day of December, eighteen hundred and sixty, at five per cent. per annum, until paid, with privilege and preference, and costs of suit.

Order, judgment amended.

DANIEL EDWARDS
vs.
E. TANNERET. } No. 448.

U. S. provisional court for the State of Louisiana.

TUESDAY, *the 29th day of May*, 1865.

Present, Hon. Cha's A. Peabody, judge.

On motion of R. J. Ker, of counsel for pl'ff, ordered that the judgment entered herein April 17th, 1865, be amended to read as follows:

On motion of R. J. Ker, of counsel for pl'ff, and on producing to the court due proof of pl'ff's demand, it is ordered, adjudged, and
64 decreed that the judgment by default herein, entered April 8th, 1865, be now confirmed, and that Daniel Edwards do have and recover from Emile Tanneret, defendant, the sum of four thousand nine hundred and ninety-five dollars $\frac{29}{100}$, with interest from thirty-first day of December, 1860, at five per cent. per annum, until paid, with privilege and preference, and costs of suit.

Rendered May 9, 1865. Signed May 13, 1865.

By the court:

(Signed) JOHN T. PEABODY, *Clk.*

Writ of fieri facias.—Issued January 30th, 1869.

Circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana.

The President of the United States to the marshal of the district of Louisiana, or his lawful deputy, greeting:

65 You are hereby commanded that you demand from Emile Tanneret the sum of four thousand nine hundred and ninety-five dollars twenty-nine cents, ($4,995 29,) with interest from 31st December, 1860, at five per cent. per annum, until paid—clerk's costs, $34 75; att'y's fee, $10 00—cash, which Daniel Edwards lately recovered by judgment of the circuit court of the United States for the 5th circuit and district of Louisiana; and if the same be not paid on demand, that then you cause the same to be made out of the personal estate of the said Emile Tanneret, in your district, if sufficient personal estate can be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said Emile Tanneret in your district, whereof he was owner on the 13th day of May, 1865, into whose hands soever the same
66 may have come, and that you have those moneys before our said court, to render to the said Daniel Edwards for the judgment aforesaid, on the 70th day from the date hereof, together with this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 30th day of January, A. D. 1869, and 93d year of the independence of the United States.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clk.*

Marshal's return.

No deposit and no instructions. Returned not executed this 16th day of March, 1869.

(Signed) H. JANSON, *D'y U. S. Mar'l.*

NEW ORLEANS, LA.

Rule & grounds.—Filed Feb'y 9, 1869.

DANIEL EDWARDS *vs.* EMILE TANNERET. } No. 5737.

67 U. S. circuit court, fifth judicial circuit and district of Louisiana.

On motion of L. A. Sheldon & Cooley & Phillips, att'ys for defendant, and on showing to this court that the plaintiff, on the 21st day of December, 1864, instituted this suit in the provisional court for the State of Louisiana, and without there having been any legal or sufficient service of citation thereon, the plaintiff obtained a default and confirmation of default therein, without any notice thereof to the defendant, and that said provisional court proceeded to issue execution on said judgment; whereupon the defendant obtained an injunction in said provisional court, enjoining and restraining any further proceedings in said execution; which injunction suit was pending when said provisional court expired, and is still pending:

68 And, on further showing to the court that the plaintiff, on the 23d day of December, 1868, filed in this court a motion suggesting merely that the defendant was an alien and citizen of the Empire of France, and in said motion caused the said suit to be docketed in this court without any notice thereof having been served upon the defendant; whereupon the record of said suit was filed in this court, making no mention of or allusion to said injunction suit; and thereupon the plaintiff caused execution to issue from this honorable court against the property and effects of the defendant, and has caused large and valuable property to be seized, and which is now under seizure by the U. S. marshal for the district of Louisiana:

And, on further showing to the court that at the time said suit commenced by plaintiff in said provisional court, and ever since that

69 time, and at the present time, both the plaintiff, Daniel Edwards and the defendant, Emile Tanneret, were and are citizens of the United States, and of the State of Louisiana, and were and are domiciliated in said State of Louisiana, and that this honorable court had and has not any jurisdiction over the parties or subject-matter of this suit:

It is ordered that the plaintiff, Daniel Edwards, and his atty's, Case & Rouse, and the United States marshal, F. J. Herron, show cause, on the 12th day of February, 1869, at 11 o'clock a. m. why said execution should not be quashed and recalled, and why all proceedings had in this case in this honorable court should not be annulled, and all seizures made under said execution should not be returned by the United States marshal, and why the plaintiff should not be enjoined and restrained from instituting any other or further proceedings in this court

70 from taking out any other execution on said pretended judgment against the property of the defendant, and why such further order should not be made as shall give general relief to defendant.

Service accepted.

Service of within accepted this 10th Febr'y, '69.
(Signed) CASE & ROUSE,
Att'ys for Edwards.

Service of rule on F. J. Herron.

Circuit court of the United States, fifth circuit and district of Louisiana,
November term, A. D. 1868.

NEW ORLEANS,
Tuesday, 9th day of February, 1869.

Court met pursuant to adjournment. Present, the Honorable E. H. Durell, dist. judge.

DANIEL EDWARDS
vs } No. 5737.
EMILE TANNERET.

71 On motion of L. A. Sheldon & Cooley & Phillips, att'ys for defendant, it is ordered that the pl'ff, Daniel Edwards, and his att'ys, Case & Rouse, & F. J. Herron, U. S. marshal, show cause on Friday, 12th inst., at 11 o'clock a. m., why the execution issued in this case should not be quashed and recalled, and why all proceedings had in this case in this hon. court should not be annulled, and all seizures made under said execution should not be released by the U. S. marshal, and why the pl'ff should not be enjoined and restrained from instituting any other or further proceedings in this court, and from taking out any other execution on said pretended judgment against the property of the def't, and why such other and further order should not be made as shall grant general relief to defendant on the grounds filed.

CLERK'S OFFICE:

72 I certify the foregoing to be a true copy from the original in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 10th day of February, 1869.

[SEAL.] (Signed) T. B. VINOT,
D'y Clerk.

Marshal's return.

Received Feb'y 10th, 1869, by the United S. marshal, and on same day of Febr'y, '69, served copy of within rule on F. J. Herron, U. S. marshal, named herein, personally, at office, in this city.

New Orleans, Feb'ry 13, '69.
(Signed) H. SAMSON,
D'y U. S. M.

Motion to fix rule.—Filed Febr'y 15, '69.

DANIEL EDWARDS
vs. } No. 5737.—U. S. circuit court.
EMILE TANNERET.

On motion of L. A. Sheldon, att'y for defendant, it is ordered

73 that the rule taken herein by defendant be fixed for Thursday, Febr'y 18th, 1869, at 11 o'clock a. m., and that the plaintiff's att'ys, Messrs. Case & Rouse, be notified thereof.

Notice of trial of rule.

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

D. EDWARDS
vs. } No. 5737.
E. TANNERET.

You are hereby notified that the rule taken in this case is assigned for trial for Thursday, 18th day of Febr'y, 1869, A. D., at 11 o'clock a. m.

By order of court.

Witness my hand and seal of the said court, at New Orleans, this 15th day of February, A. D. 1869.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

To CASE & ROUSE, Esqrs.

74 *Marshal's return.*

Received Febr'y 16, 1869, by the U. S. marshal, and on same day of Febr'y, '69, served copy of within notice on Case & Rouse, att'ys named herein, in hands J. D. Rouse, a member of the firm, personally, at U. S. court-room, in this city.

New Orleans, Febr'y 18, '69.

(Signed) J. W. SAWYER,
D'y U. S. Marshal.

Note of evidence.—Filed Febr'y 18, '69.

U. S. circuit court.

DANIEL EDWARDS
vs. } No. 5737.
EMILE TANNERET.

Plaintiff in rule offered in evidence record No. 622, U. S. provisional court.

A. Denis sworn for pl'ff in rule.

D. Edwards & R. J. Ker sworn for defendant.

75 Record No. 622 of provisional court offered in evidence by def't. Filed Febr'y 18, '69.

Petition.—Filed July 8th 1865.

To the Honorable Charles A. Peabody, judge of the United States provisional court for the State of Louisiana:

The petition of Emile Tanneret, a resident of the parish of Pointe Coupee, State aforesaid, with respect represents that, on the 21st December, 1864, Daniel Edwards, a resident of the city of New Orleans,

filed a petition in this court against your petitioner, claiming from him the sum of four thousand nine hundred and ninety-five $\frac{29}{100}$ dollars, with 5% interest from the 31st December, 1860, alleging the same to be due him by your petitioner for a balance of account for materials and workmanship performed in making and erecting certain
76 works on the plantation of your petitioner, which will more fully appear by reference to the petition in said suit numbered No. 448 of the docket of this court.

Your petitioner further shows that on the 17th day of April, 1865, without any appearance whatever on his part, judgment was rendered against him for the sum above said, with the aforesaid interest; and on the 9th May, 1865, the same judgment was again rendered against your petitioner, under the pretence of amending the first already mentioned. Now, petitioner shows that the whole proceedings in this court, from the filing of the petition in said suit, No. 448, to the rendition of the judgment therein are null and void for the following reasons, viz: 1st. That your petitioner was never legally cited; the service of the citation and petition in said suit was not made personally on petitioner, nor at the residence of petitioner, nor on any person above the age of
77 fourteen years residing in the house of petitioner. 2d. That the service aforesaid was not made by any officer known to the law, he being a special deputy marshal, appointed by a deputy marshal of this court; that deputy marshals of this court have no power or legal right to appoint deputy marshals. 3rd. That the legal delays to which petitioner is entitled were not allowed him before judgment was rendered against him; his residence being one hundred and seventy-five miles from the office of the clerk of this court. 4th. That some five or six years ago the said Daniel Edwards instituted before the seventh district court of the parish of Pointe Coupee suit against your petitioner for the same cause of action, and the same amount as that claimed in aforesaid suit No. 448 of the docket of this court, and the same was pending before said court at the time the petition in suit No. 448 was filed in this court, and is still pending therein; no motion or step
78 whatever having been taken to dismiss it. 5th. That your petitioner was entirely ignorant of the proceedings instituted in this honorable court against him, and relied upon the proceedings instituted against him in the district court of the parish of Pointe Coupee as a protection in law and equity against similar proceedings for a similar cause of action in any other court. That said Daniel Edwards has caused a writ of fi. fa. to issue upon the judgment rendered against petitioner by this court, and under said fi. fa. the marshal has proceeded to seize and taken in his possession the following property belonging to your petitioner, viz: "A tract of land or plantation, and all the buildings thereon, and all moveable property belonging to E. Tanneret, False River; also one horse, harness, and wagon, which is on the plantation of H. H. Taylor, in the parish of Pointe Coupee, State of La., belonging to the E. Tanneret."
79 Now, your petitioner avers that, for the reasons above specially alleged, the judgment above said, rendered by this court against him, is absolutely null, void, and of no effect, and he is entitled to have the same set aside.

Further avers that, unless restrained by a writ of injunction, the marshal of this court will proceed to advertise and sell the above-described property seized by him as aforesaid, in order to satisfy the above said judgment; and your petitioner is entitled to have all executory proceedings stayed until the decision of this court upon his

demand, that the judgment already rendered against be set aside and annulled.

Wherefore, the premises considered, petitioner prays that said Daniel Edwards be duly cited to answer this demand; and, after legal delays, that the judgments rendered by this honorable court in the suit of Daniel Edwards vs. Emile Tanneret, No. 448, on the 17th April and 9th May, 1865, for the reasons above alleged, be declared null,
80 void, and of no effect; and, further, that a writ of injunction issue from this court commanding Isaac E. Clarke, marshal thereof, not to proceed any further in the execution of the writ of fi. fa. placed in his hands, and under which he seized the abeve property of petitioner, until the further orders of this court, and that said marshal be served with a copy of this petition, and for general relief in the premises and costs. And petitioner will ever pray, &c.

(Signed) T. J. & W. H. COOLEY,
Att'ys for Plaintiff.

C. DURFOUR, *No. 26 St. Charles Street.*

Affidavit.

UNITED STATES OF AMERICA, *State of Louisiana:*

Before me, the undersigned authority, personally came and appeared Emile Tanneret, plaintiff in the within suit, who, after being duly
81 sworn, deposes and says that all the allegations of the within petitioner are true and correct.

(Signed) E. TANNERET.

Subscribed and sworn to before me this 8th July, 1865.

(Signed) JOHN T. PEABODY, *Clerk.*

Order.

Let a writ of injunction issue in this case, as within prayed for, upon pl'ff giving bond, with good and solvent security, in the sum of nine thousand dollars, conditioned as the law directs.

New Orleans, July 14th, 1865.

(Signed) CH'S A. PEABODY, *Judge.*

Bond.

Know all men by these presents that we, E. Tanneret, as principal, Y. J. Davilva, as surety, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto in the sum
82 of nine thousand dollars, lawful money of the United States of America, to be paid by the said E. Tanneret & Y. J. Davilva, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 17th day of July, in the year of our Lord 1865.

Whereas E. Tanneret has this day presented a petition to the honorable the provisional court for the State of Louisiana:

Now, the condition of the above obligation is, that we, the above-bounden E. Tanneret, as principal, and Y. J. Davilva, as surety, will well and truly pay to the said def't, Daniel Edwards, the defendant in

said cause, all such damages as he may recover against us in case
83 it should be decided that the writ of injunction was wrongfully obtained.

(Signed) E. TANNERET. [L. S.]
" Y. J. DASILVA. [L. S.]

Signed, sealed, and delivered in presence—

Service accepted by marshal.

I hereby accept service of the within petition for the marshal.
Dated at New Orleans, July 17, 1865.
(Signed) A. EAYRES,
D'y Marshall.

Writ of injunction.

United States provisional court for the State of Louisiana.

To the U. S. provisional marshal for the State of Louisiana, greeting:

EMILE TANNERET } vs. DANIEL EDWARDS. } No. 622.

You are hereby enjoined, in the name of the United States, and of the provisional court for the State of Louisiana, from proceeding
84 any further in the execution of the fieri facias issued in the cause in which Daniel Edwards is plaintiff, and Emile Tanneret is defendant, and numbered 448 of the docket of this court; and you are thus enjoined until further order from this court. And in what manner you shall have executed this writ, you make return thereof to our said court, according to law.

Witness the Honorable Charles A. Peabody, judge of our said court, at the city of New Orleans, this seventeenth day of July, in the year of our Lord eighteen hundred and sixty-five.

(Signed) JOHN T. PEABODY, *Clk.*

I hereby accept service of the within writ of injunction for the marshal.
Dated New Orleans, July 17, 1865.
(Signed) A. EAYRES,
D'y Marshal.

85 *Citation of Daniel Edwards.*

The President of the United States of America to the United States provisional marshal for the State of Louisiana, greeting:

You are hereby commanded to summon Daniel Edwards, citizen of the State of La., to comply with the demand of Emile Tanneret, citizen of the State of La., contained in the petition, of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the provisional court for the State of Louisiana, holding session in the city of New Orleans, in ten days after the service hereof,

or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held; and that you make due return hereof on the first Monday of August, 1865.

86 Witness the Honorable Charles A. Peabody, judge of the said court, at the city of New Orleans, this 17th day of July, A. D. one thousand eight hundred and sixty-five.

(Signed) JOHN F. BREMER,
Dy Clerk.

Marshal's return.

Received this 17th day of July, 1865; and on the 17th day of July, 1865, served copies of the within citation, plaintiff's petition, on the within-named def't, Daniel Edwards, in the manner following, to wit, personally, in New Orleans.

(Signed) PHILIP McKENNA,
Special Dy Marshal.

Extract from the minutes.—Order, rule dismissed.

NEW ORLEANS, *Thursday, February 18th*, 1869.

The court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

87 DANIEL EDWARDS *vs.* EMILE TANNERET. } No. 5737.

The rule taken by the defendant on 9th inst. was called up—Cooley & Philips & L. A. Sheldon for pl'ff in rule; Case & Rouse for Daniel Edwards—when, after hearing the pleadings, evidence, and argument, it is ordered that the said rule be dismissed with costs.

Rule and grounds.—Entered and filed Feb'y 20, 1869.

DANIEL EDWARDS *vs.* EMILE TANNERET. } No. 5737.

U. S. circuit court for fifth circuit & district of Louisiana.

On motion of L. A. Sheldon and Cooley & Philips, att'ys for defendant, and on showing to the court that this cause was originally
88 commenced in the provisional court for the State of Louisiana, constituted by order of the President of the United States, and has been filed in this court, on motion of plaintiff, and on suggestion by the plaintiff that judgment had been rendered therein by the said provisional court, execution has been ordered by this court, and has been issued, and is in the hands of F. J. Herron, U. S. marshal for said district; and on further showing that the defendant had no notice of the application for said execution or the issuing of the same; and on showing further that no judgment had ever been rendered or signed in this case, either by the judge of said provisional court, nor of this

court, and that said execution was erroneously issued, and is still improperly in the hands of said marshal:

It is ordered that the plaintiff, Daniel Edwards, represented by
89 Mess'rs Case & Rouse, att'ys at law, and the United States marshal aforesaid, show cause on the 23d day of February, 1869, at 11 o'clock a. m., why said execution should not be quashed and recalled, and all orders of this court vacated meanwhile until the hearing of this rule, and a final order thereon; it is further ordered that no further proceedings be had by the United States marshal under and by virtue of said execution.

Service of rule, &c.

Circuit court of the United States, fifth circuit and district of Louisiana, November term, A. D. 1868.

NEW ORLEANS,
Saturday, 20th day of February, 1869.

Court met pursuant to adjournment. Present, the Honorable E. H. Durell, dis't judge; the honorable , judge.

DANIEL EDWARDS
vs. } No. 5737.
EMILE TANNERET.

90 On motion of L. A. Sheldon & Cooley & Philips, attorneys for the defendant, it is ordered that the plaintiff, through his attorneys, Mess. Case & Rouse, and the U. S. marshall, show cause on the 23d instant, at 11 a. m., why the execution issued in this case should not be quashed and recalled, and all orders of this court vacated meanwhile until the hearing of this rule and final order thereon.

It is further ordered that no further proceedings be had by the U. S. marshal under and by virtue of said execution.

CLERK'S OFFICE:

I certify the foregoing to be a true copy from the original record in this office.

Witness my hand and seal of said court, at the city of New Orleans, this 20th day of February, 1869.

(Signed) F. B. VINOT,
D'y Clerk.

91 *Marshal's return.*

Received Febr'y 23, 1869, by the U. S. marshal, and on same day of Febr'y, '69, served copy of within rule, &c., on Case & Rouse, named herein, in hands of J. D. Rouse, a member of said firm, personally, at office corner of Natchez & Magazine streets, in this city, and on same day served copy of same on F. J. Herron, U. S. marshal, named herein, personally, at office in custom-house building.

New Orleans, Feb'y 23d, '69.

(Signed) S. W. REED,
D'y U. S. Marshall.

Minute of evidence.—Filed March 2d, '69.

U. S. circuit court, district of La.

D. EDWARDS
vs.
E. TANNERET. } No. 5737.—Minute of evidence.

92 Plaintiff offered the minutes of the U. S. provisional court for State of La., and record of judgment.
J. P. Sullivan, sworn for pl'ff.

Hearing & submission of rule.—March 2, 1869.

NEW ORLEANS,
Tuesday, March 2d, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

D. EDWARDS
vs.
E. TANNERET. } No. 5737.

The rule taken by the def't on 20th ult'o was called—W. H. Hunt, for plaintiff in rule; Case & Rouse, for def't in rule—when, after
93 hearing the pleadings, evidence, and argument, the court took time to advise.

Judgment.

United States circuit court, fifth circuit and district of Louisiana, November term, 1868.

NEW ORLEANS,
Thursday, March 11th, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

D. EDWARDS
vs.
E. TANNERET. } No. 5737.

For reasons orally assigned by the court, it is ordered and decreed that the cause be dismissed, as proceedings which, under the act
94 of Congress approved July 28th, 1866, must remain in the archives of the clerk of the district court of the United States for the district of Louisiana.
Judgment rendered March 11, 1869.
Judgment signed March 16, 1869.
(Signed) E. H. DURELL, *Judge.*

Petition and order for writ of error.—Filed March 25th, 1869.

U. S. circuit court.

DANIEL EDWARDS
vs.
EMILE TANNERET. } No. 5737.

To the honorable the judges of the circuit court of the United States, fifth circuit and district of Louisiana:

The petition of Daniel Edwards respectfully shows that he is aggrieved by the final judgment herein rendered against him on the
95 16th instant in the above-entitled suit, and he is informed and believes there is error therein to his prejudice, and he desires a writ of error be allowed him therefrom returnable to the Supreme Court of the United States of America on the first Monday of December, 1869, upon giving bond for costs in such amount as the court may order, and for all equitable and general relief.

(Signed) CASE & ROUSE,
Att'ys for Pl'ff.

Order.

A writ of error is allowed in this case, as prayed for, returnable to the Supreme Court of the United States on the first Monday of December, 1869, the petitioner giving bond in the sum of five hundred dollars with good and solvent security, conditioned as the law requires.

March 25th, 1869.

(Signed) E. H. DURELL, *Judge.*

96 *Bond for writ of error.—Filed March 25th, 1869.*

Know all men by these presents that we, Daniel Edwards, as principal, and James D. Edwards, as surety, are held and firmly bound unto Emile Tanneret in the full and just sum of five hundred dollars, to be paid to the said Emile Tanneret, his certain attorney, executors, administrators, or assigns; to which payment, and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a circuit court of the United States, fifth ju-
97 dicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said court, wherein Daniel Edwards is plaintiff, and Emile Tanneret defendant, judgment was rendered against the said Daniel Edwards, plaintiff; and the said Daniel Edwards having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Emile Tanneret, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Daniel Edwards shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) DAN'L EDWARDS. [L. S.]
(Signed) JAMES D. EDWARDS. [L. S.]

Sealed and delivered in the presence of—
[L. S.] (Signed) F. B. VINOT.

98 United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit and district of Louisiana, do hereby certify that the foregoing 97 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Daniel Edwards vs. Emile Tanneret, No. 5737 of the docket, so far as the same now remain of record or on file in said court, (with the exception of the proceedings in garnishment.)

Witness my hand and the seal of said court at the city of New Orleans this 22d day of November, A. D. 1869.

[SEAL.] D. URBAN, *Clerk.*

[Five-cent internal revenue stamp affixed and canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law; and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 22d day of November, A. D. 1869.

E. H. DURELL, *Judge.*

[Five-cent internal revenue stamp affixed and canceled.]

99 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between Daniel Edwards and Emile Tanneret, a manifest error hath happened, to the great damage of the said Daniel Edwards, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 25th of March, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] D. URBAN,

Clerk of the United States Circuit Court for District of Louisiana.

100 (Indorsed:) United States circuit court. No. 5737. Daniel Edwards vs. Emile Tanneret. Writ of error.
Filed March 25, 1869.

F. B. VINOT, *D'y Clk.*

101 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Emile Tanneret, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Daniel Edwards is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 25th day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

E. H. DURELL, *Judge.*

102 (Indorsed:) United States circuit court. No. 5737. Daniel Edwards vs. Emile Tanneret. Citation in error.

Marshal's return.

Received, Mar. 27, 1869, by the U. S. marshal; and Cooley and Phillips, attorneys for det't named herein, refusing to accept service, & being unable to find the defendant or his representative, this writ returned not executed.

New Orleans, April 1st, '69.

J. W. SAWYER,
D'y U. S. Marshal.

(Indorsement on cover:) No. 415. Daniel Edwards, plaintiff in error, vs. Emile Tanneret. Louisiana C. C. U. S.
Filed 4th January, 1870.

Supreme Court of the United States.

DECEMBER TERM, A. D. 1870.

No. 189.

DANIEL EDWARDS, PLAINTIFF IN ERROR,

vs.

EMILE TANNERET.

In Error to the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR THE PLAINTIFF IN ERROR.

I.

Statement of Case.

1st. The plaintiff in error, Daniel Edwards, commenced his suit against Emile Tanneret in the Provisional Court for the State of Louisiana, on the 21st day of December, A. D. 1864, and the said defendant was duly served with process in said action on the 9th day of March, 1865. Record, p. 6.

2d. That on the 8th day of April, 1865, the default of the defendant in error was entered in said cause; and afterwards, on the 17th day of April, 1865, the said provisional court confirmed said default, having heard the evidence, assessed the damages in said action, and rendered a judgment in favor of the plaintiff for the sum of four thousand nine hundred and ninety-five dollars and twenty-nine cents, with interest thereon from the 31st day of Decem-

ber, 1860, at the rate of five per cent. per annum. Record, pp. 17, 18.

3d. That on the 23d day of December, 1868, the record in said cause, as well as the judgment rendered therein in said provisional court, were, on motion of the plaintiff in error, transferred from the district court to the United States Circuit Court for the District of Louisiana. Record, p. 1.

4th. That on the 30th day of January, 1869, a writ of *fieri facias*, issued upon said judgment out of the United States Circuit Court for the said District of Louisiana, directed to the marshal of said district to execute. Record, p. 18.

5th. That on the 19th day of February, 1869, a motion and order was made in the said Circuit Court, in said cause, in the words and figures following :

DANIEL EDWARDS
vs.
EMILE TANNERET. } No. 5737.

U. S. circuit court, fifth judicial circuit and district of Louisiana.

On motion of L. A. Sheldon and Cooley & Phillips, attorneys for defendant, and on showing to this court that the plaintiff, on the 21st of December, 1864, instituted this suit in the provisional court for the State of Louisiana, and without there having been any legal or sufficient service of citation thereon, the plaintiff obtained a default and confirmation of default therein, without any notice thereof to the defendant, and that the said provisional court proceeded to issue execution on said judgment; whereupon the defendant obtained an injunction in said provisional court, enjoining and restraining any further proceedings in said execution, which injunction suit was pending when said provisional court expired, and is still pending :

And, on further showing to the court that the plaintiff, on the 23d day of December, 1868, filed in this court a motion suggesting merely that the defendant was an alien and citizen of the Empire of France, and in said

motion caused the said suit to be docketed in this court without any notice thereof having been served upon the defendant; whereupon the record of said suit was filed in this court, making no mention of or allusion to said injunction suit; and thereupon the plaintiff caused execution to issue from this honorable court against the property and effects of the defendant, and has caused large and valuable property to be seized, and which is now under seizure by the United States marshal for the district of Louisiana.

And, on further showing to the court that at the time said suit commenced by plaintiff in said provisional court, and ever since that time, and at the present time, both the plaintiff, Daniel Edwards and the defendant, Emile Tanneret, were and are citizens of the United States, and of the State of Louisiana, and were and are domiciliated in said State of Louisiana, and that this honorable court had and has not any jurisdiction over the parties or subject-matter of this suit:

It is ordered that the plaintiff, Daniel Edwards, and his attorneys, Case & Rouse, and the United States marshal, F. J. Herron, show cause, on the 12th day of February, 1869, at 11 o'clock a. m. why said execution should not be quashed and recalled, and why all proceedings had in this case in this honorable court should not be annulled, and all seizures made under said execution should not be returned by the United States marshal, and why the plaintiff should not be enjoined and restrained from instituting any other or further proceedings in this court from taking out any other execution on said pretended judgment against the property of the defendant, and why such further order should not be made as shall give general relief to defendant. Record, p. 19.

6th. That on the 18th day of February, 1869, the said circuit court having duly considered said motion and the rule taken thereon, ordered and adjudged "*that the said rule be dismissed with costs.*" Record, p. 25.

7th. That on the 20th day of February, 1869, a certain other motion and order was made and entered in said cause, in the said circuit court, in the words and figures following, viz:

DANIEL EDWARDS
vs.
EMILE TANNERET. } No. 5737.

U. S. circuit court for fifth circuit and district of Louisiana.

On motion of L. A. Sheldon and Cooley & Phillips, attorneys for defendant, and on showing to the court that this cause was originally commenced in the provisional court for the State of Louisiana, constituted by order of the President of the United States, and has been filed in this court, on motion of plaintiff, and on suggestion by the plaintiff that judgment had been rendered therein by the said provisional court, execution has been ordered by this court, and has been issued, and is in the hands of F. J. Herron, U. S. marshal for said district; and on further showing that the defendant had no notice of the application for said execution or the issuing of the same; and on showing further that no judgment had ever been rendered or assigned in this case, either by the judge of said provisional, nor of this court, and that said execution was erroneously issued, and is still improperly in the hands of said marshal:

It is ordered that the plaintiff, Daniel Edwards, represented by Messrs. Case & Rouse, attorneys at law, and the United States marshal aforesaid, show cause on the 23d day of Februaray, 1869, at 11 o'clock a. m., why said execution should not be quashed and recalled, and all orders of this court vacated meanwhile, until the hearing of this rule, and a final order thereon; it is further ordered that no further proceedings be had by the United States marshal under and by virtue of said execution. Record, pp. 25, 26.

8th. That on the 11th day of March, 1869, the said circuit court made the following other and further order in said cause, viz:

D. EDWARDS
vs.
E. TANNERET. } No. 5737.

For reasons orally assigned by the court, it is ordered and decreed that the cause be dismissed, as proceed-

ings which, under the act of Congress approved July 28, 1866, must remain in the archives of the clerk of the district court of the United States for the district of Louisiana.

Judgment rendered March 11, 1869.

Judgment signed March 16, 1869.

(Signed) E. H. DURELL, *Judge*.

Record, p. 27.

9th. The only other fact presented in this record material, to the consideration of the questions involved here, are those stated in the record of the application to restrain the execution of the judgment, rendered in favor of the plaintiff in error against the defendant, *in the provisional court*. This injunction merely enjoined the marshal of the provisional court "from proceeding any further in the execution of the fieri facias issued in the cause in which Daniel Edwards is plaintiff, and Emile Tanneret is defendant, and numbered 448 of the docket of this court; and you are thus enjoined until further order from this court." Record, pp. 21, 22, 23, 24, 25.

II.

1st. The provisional court of Louisiana was a legally constituted tribunal, and as such had jurisdiction of the cause of action stated in the declaration or complaint filed by the plaintiff in error in said provisional court.

That the provisional court of Louisiana was established by competent authority this court has already decided.

In the case of *The Grapeshot*, 9 Wallace R., 129, this court, speaking of the authority of the President to establish said provisional court, use the following language:

"We have no doubt that the provisional court of Louisiana was properly established by the President in the exercise of his constitutional authority during war."

9 Wallace R., 133.

Leitensdorfer vs. *Webb*, 20 Howard R., 176.

Jecker vs. *Montgomery* 18 Ib., 110.

Cross vs. *Harrison*. 16 Ib., 164.

United States vs. *Rice*, 4 Wheaton, 206.

The jurisdiction of said provisional court was conferred by the executive order of the President, by which said court was constituted. So much of the order of the President establishing said court as relates to this question, is as follows:

Executive Order Establishing a Provisional Court in Louisiana.

EXECUTIVE MANSION,
WASHINGTON, *October* 20, 1862.

The insurrection which has for some time prevailed in several of the States of this Union, including Louisiana, having temporarily subverted and swept away the civil institutions of that State, including the judiciary and the judicial authorities of the Union, so that it has become necessary to hold the State in military occupation; and it being indispensably necessary that there shall be some judicial tribunal existing there capable of administering justice, I have therefore thought it proper to appoint, and I do hereby constitute a provisional court which shall be a court of record for the State of Louisiana, and I do hereby appoint Charles A. Peabody, of New York, to be provisional judge, to hold said court *with authority to hear, try and determine all causes, civil and criminal, including causes in law, equity, revenue and admiralty,* and particularly all such powers and jurisdiction as belong to the District and Circuit Courts of the United States, conforming his proceedings as far as possible to the course of proceedings and practice which has been customary in the courts of the United States and Louisiana; his judgments to be final and conclusive.

* * * * * *

ABRAHAM LINCOLN.

By the President.

WILLIAM H. SEWARD,
Secretary of State.

That the provitional court had jurisdiction of the subject matter of the cause of action, upon which the judgment was rendered against the defendant, is as clear as that the court was a legally constituted tribunal, for the cause of action stated in the petition in the provisional

court, discloses a legal demand for which an action at law could be maintained.

2d. *The judgment rendered by the provisional court in favor of the plaintiff in error against the defendant, was a valid judgment, final and conclusive upon the defendant, and so remained at the time the said provisional court ceased to exist.*

A. The service of process upon the defendant was in accordance with the laws of Louisiana in force at the time of such service, and authorized the provisional court to render a judgment in favor of the plaintiff. The code of Louisiana in regard to service of process, provides as follows:

Art. 187. The citation, and the petition accompanying it, may be made in two different ways, by being delivered to the defendant in person, *or by being left at his domicil.*

Art. 189. Service is made at the domicil when copies of the citation and petition are left at the usual place of domicil or residence of the defendant, if he be absent, by delivering them to a free person, apparently above the age of fourteen, living in the house.

Louisiana Code of Practice, by Fuqua, p. 146.

The return of the special deputy marshal, who served the citation and petition, shows that the service was in strict accordance with the statutes of Louisiana upon that subject. The return is as follows:

Marshal's Return of Service.

Received this 21st day of December, 1865, and on the 9th day of March, 1865, served copies of the within citation, plaintiff's petition, on the within named defendant, in the manner following, to wit: by leaving the same at his domicil on "False River," in the parish of Point Coupee, in the hands of Mrs. Francois Dormeno, a free person, apparently over the age of 14 years, living and residing in said domicil, and whose name and other facts connected with this service, I learned by interrogating

her; said Emile Tanneret, the defendant, being absent from home at the time of said service.

(Signed) JOHN H. BUKUP,
Special Deputy Marshal.

I hereby depute John H. Bukup as special deputy marshal to serve the within citation and petition.

Dated March 1st, 1865.

(Signed) ALMON EAYRE,
Record, p. 6. *Deputy Marshal.*

B. The service of the citation and petition was made by an officer legally authorized to make such service, and conferred upon the provisional court jurisdiction of the person of the defendant. It is no objection to the validity of such service that it was made by a *special* deputy marshal appointed by and deriving his authority from a *deputy* marshal.

In the case of *Hunt* vs. *Burrell et als.*, 5 John. R., 137, it was objected that the service of process was void, because made by a bailiff appointed by a deputy sheriff. But the court overruled the objection, and in discussing the question used the following language:

The general maxim that *delegata potestas non potest delegari*, is correct when duly applied; for to make a deputy by a deputy, in the sense of the maxim, implies an assignment of the whole power, which a deputy cannot make. A deputy has general powers which he cannot transfer, *but he may constitute a servant or bailiff to do a particular act.*

In the case of *The New Albany and Salem R. R. Company* vs. *Grooms*, 9 Ind. R., 243, 244, objection to the service of process was taken, for the same reason stated in the preceding case. But the court disposed of the objection in the following concise statement of the principle upon which the validity of the service was sustained. The court in that case use the following language:

A sheriff deputy or bailiff may empower another to do a

particular act, and the act, if it be within the power of the deputy or bailiff, and be performed pursuant to authority, is valid. The power thus shown to exist is of common law origin.

In the case of *McGuffie* vs. *The State*, 17 Georgia R., 497, the same proposition was asserted. In that case the defendant was indicted and on trial for murder, and a portion of the jury had been drawn or summoned by a bailiff appointed by an under or deputy sheriff. It was objected that the jury was not a legal one for *that* reason, and a motion was made to dismiss the panel. The motion was overruled and an exception taken by the defendant. In passing upon this exception, the Supreme Court use the following language:

It appears by the record that these persons had been appointed bailiffs by the under sheriff for the purpose of executing this particular duty. *This was lawful. An under sheriff may constitute a bailiff for the purpose of doing a particular act*, though he cannot appoint a deputy to do the general business of his office.

To the same effect also are the following authorities—

Conckling's Practice U. S. Courts, 8th ed., 342.
Gwynne on Sheriffs, p. 43.
Parker vs. *Kett*, 12 Mod., 467.
Ellison vs. *Stevenson*, 6 Monroe, 275.
Sergeant of Court of Appeals vs. *George*, 5 Littel, 198.

It would seem clear therefore from these authorities that the service of the citation and petition upon the defendant was made by an officer legally qualified to make such service, and that the defendant was concluded by such service.

C. Under the code of Louisiana the judgment rendered against the defendant in the provisional court could only be revised, set aside or reversed by resort to one of the following modes of procedure:

1. By a new trial;
2. By appeal;

3. By action of nullity ;

4. By rescission.

The defendant sought to avoid the judgment of the provisional court by an action for the nullity of the judgment.

The code of Louisiana provides that the action of nullity may be brought for the following causes :

Art. 605. The causes for which the nullity of a definitive judgment may be demanded are two-fold ; those that are relative to the form of proceeding, and those that appertain to the merits of the question tried.

Art. 606. The vices of form for which a judgment can be annulled, are the following :

1. If a judgment has been rendered even contradictorially against a person disqualified by law from appearing in a suit, as a minor, without the assistance of his curator or tutor, or a married woman without the authorization of her husband or the court.

2. If the defendant, although qualified to appear in a cause, have been condemned by default, without having been cited.

3. When the judgment though clothed with all the necessary formalities, has nevertheless been given by a judge incompetent to try the suit, either owing to the amount in dispute, or the nature of the cause.

4. If the defendant has not been legally cited, and has not entered appearance, joined issue, or had not a regular judgment by default taken against him.

Code of Practice of Louisiana, by Fuqua, 258, 259.

The causes stated by the defendant in his petition for the nullity of the judgment in the provisional court, are follows :

1st. That your petitioner was never legally cited ; the service of the citition and petition in said suit was not made personally on petitioner, nor at the residenee of petitioner, nor on any person above the age of fourteen years residing in the house of petitioner. 2d. That the service aforesaid was not made by any officer known to the law, he being a special deputy marshal, appointed by a deputy marshal of this court; that deputy marshals of this court

have no power or legal right to appoint deputy marshals. 3rd. That the legal delays to which petitioner is entitled were not allowed him before judgment was rendered against him ; his residence being one hundred and seventy-five miles from the office of the clerk of this court. 4th. That some five or six years ago the said Daniel Edwards instituted before the seventh district court of the parish Pointe Coupee suit against your petitioner for the same cause of action, and the same amount as that claimed in aforesaid suit, No. 448 of the docket of this court, and the same was pending before said court at the time the petition in suit No. 448 was filed in this court, and is still pending therein ; no motion or step whatever having been taken to dismiss it. 5th. That your petitioner was entirely ignorant of the proceedings instituted in this honorable court against him, and relied upon the proceedings instituted against him in the district court of the parish of Pointe Coupee as a protection in law and equity against similar proceedings for a similar cause of action in any other court. Record, p 22.

It will be observed that each of the causes assigned for seeking to avoid the judgment of the provisional court, by the defendant, are those which relate to the service of the citation and petition. It is not alleged or suggested that the judgment was inequitable or unjust, or that it was obtained by any fraud or other ill-practices on the part of the plaintiff.

The action of nullity brought by the defendant in the provisional court proceeded upon the assumption that the return of the special deputy marshal as to the service of the citation and petition was false.

The defendant could not by his own oath falsify the *return* of the officer who served the process. This is the settled rule of law in the courts where the common law prevails ; we know of no exceptions to it in Louisiana.

Hill vs. *King*, 4 Ohio R., 136.
Taylor vs. *Lewis*, 2 J. J. Marsh., 400.
Hamilton vs. *Matlock*, 5 Blackf., 420.
Remington vs. *Henry*, 6 Ibid, 63.
Bott vs. *Burwell*, 9 Mass., 96.

Niles vs. *Hancock*, 3 Metcalf, 568.
Smith vs. *Hornbuck*, 3 A. K. Marsh., 392.
Newtz vs. *Hamman*, 5 Whart., 150.
Stenson vs. *Snow*, 10 Maine, 263.

Nor can a proceeding in equity, to enjoin a judgment rendered on such return be maintained on an allegation that process was never served upon him, unless the party attacking the return establishes a fraudulent combination between the plaintiff and the officer.

Taylor vs. *Lewis*, 2 J. J. Marsh., 400.

D. The action of nullity of judgment could not be maintained in the provisional court, because that court, by the terms of the proclamation by which it was contituted, had equitable jurisdiction, and the defendant should have resorted to his bill in equity to set aside said judgment. The provisional court was not a State but a Federal court, and as such had conferred upon it "*all such powers and jurisdiction as belong to the District and Circuit Courts of the United States.*

It has always been held by this court, that in Louisiana the Federal courts must proceed in equity causes according to the principles, rules and usages which belong to courts of equity.

Parsons vs. *Bedford*. 3 Peters R., 444.
Livingston vs. *Story*, 9 Ibid, 655.
Grimes et als. vs. *Realf et als.*, 15 Ibid, 9.
Bennett vs. *Butterworth*, 11 How. R., 669.

E. The practice of the provisional court was not prescribed or controlled by the code of practice in force in Louisiana, during the time of its existence. The local laws of that State could not affect either its jurisdiction or its practice. (*Parker* vs. *Turner, et als* 12, *How., R.* 39.) The only questions which can be legitimately made here, in respect to said judgment, are: 1st., whether the provisional court had jurisdiction of the cause of ac-

tion? 2d. Whether said court had acquired jurisdiction of the person of the defendant, by sufficient and legal service of process? 3d. Whether said court did, in fact, render a judgment therein in favor of the plaintiff and against the defendant, as stated in the record herein?

Each of these inquiries must be answered in the affirmative, and the judgment of said provisional court, in favor of the said plaintiff, should therefore be held to have been and to be final and conclusive upon the defendant. The defendant cannot avail himself of the objection that the judgment was not signed by the judge, as required by the code of Louisiana, even if the record showed that it was not so signed. The presumption of law is that the judgment was signed as the record shows.

1 Stat. at Large, 91.

Parker vs. *Turner*, 12 How., R., 39.

Roach vs. *Halings*, 16 Peters, 319.

3d. *The judgment of said provisional court, in favor of the plaintiff in error, being in full force and unexecuted, became, in virtue of the provisions of the act of Congress approved July 28th*, 1866, *the judgment of the circuit court of the United States for the district of Louisiana, and being such, the said circuit court had lawful authority to cause the same to be executed as other judgments of said court.*

The act of Congress under which the records, judgments and decrees of the said provisional court became the records, judgments and decrees of the district court for the eastern district of Louisiana, is as follows:

"That all suits, causes, prosecutions and proceedings in the United States provisional court for the State of Louisiana, with the records thereof, be, and the same are hereby, transferred to the United States district court for the eastern district of Louisiana; and all suits, causes, prosecutions and proceedings so transfered shall be proceeded with in said court, and tried and determined and process

and judgment issued and executed therein, and by said court, in the same manner and with like effect, as if the same had been commenced originally in said district court, *provided however*, that any suit or proceeding so transferred, of which the circuit court could take jurisdiction, under the laws of the United States, shall in like manner be heard and determined in the circuit court, held in said district.

SEC. 2. *And be it further enacted*, that in case *suits or proceedings are pending in said provisional court*, which could not have been instituted in said circuit or district court, *the record shall remain in said district court without further action therein.*

SEC. 3. *And be it further enacted*, that all *judgments*, orders, decrees and decisions of the United States provisional court for the State of Louisiana, relating to the causes hereby transfered to the district court for the eastern district court of eastern district of Louisiana, *or to the circuit court* held in said district, shall at once become the orders, decrees and decisions of said district court or said circuit court, unless the same are inconsistent with the rules and proceedings thereof; and may be enforced, pleaded and proved as the judgments, orders, decrees or decisions of said district court or said circuit court.

14 *Statutes at Large*, 344.

This court has twice affirmed the power and authority of Congress to transfer the judgments of said provisional court to the district and circuit courts for the eastern district of Louisiana, and that the judgments so transfered, in virtue of such transfer, became the judgments or decrees of said circuit or said district court.

In the case of the *Grapeshot*, 7 Wallace, 563, a motion to dismisss was made, because no appeal could be properly taken from a decree of the provisional court of Louisiana, but the court in over-ruling the objection, use the following language:

The motion to dismiss is made upon the ground that the decree below was rendered by the provisional court of Louisiana, established by the military authority of the President, during the late rebellion, from which no

appeal could be properly taken, but we find, on looking into the statute, that when the provisional court ceased to exist, its judgments and decrees were directed to be transferred into the circuit court and to stand as the judgments or decrees of that court. And it is from the decree of the circuit court that the decree under consideration was was taken. As an appeal from that court, it was regular, and the motion to dimiss must be denied.

And again, in the same case, when it came before the court for hearing upon the questions presented by the appeal, the court say:

We have no doubt that Congress had power upon the close of the war and the dissolution of the provisional court to provide for the transfer of cases pending in that court, and of its judgments and decrees to the proper courts of the United States.

9 Wallace, 133.

If we are correct in assuming that the judgment rendered in the provisional court against the defendant, was final and conclusive and was unaffected by the action of nullity instituted by the defendant in the provisional court, then it necessarily results from the provisions of said statute and these authorities, that the right of the plaintiff to execute said judgment in the Circuit Court was perfect and complete. The proceedings in the action of nullity could not, nor did they annul, set aside or reverse the judgment of the provisional court. They could not have that effect until a decree of nullity of the judgment had been pronounced. The injunction issued against the marshal did not affect the judgment in favor of the plaintiff, it only restrained the marshal from proceeding to levy the execution issued upon said judgment. The case in which the judgment in favor of the plaintiff was rendered, was not a "*case pending*" within the intention and meaning of the second section of said act of Congress. It had become a judgment, and being such it remained for the Circuit Court to execute it. The proceedings in the action of nullity could

not have been instituted in the Circuit Court. That suit brought by the defendant against the plaintiff in the provisional court was "*a cause pending*" within the meaning of said act of Congress. It was undisposed of, undecided, and no answer had been filed to it, and the record and proceeding therein remained in the District Court as provided in the second section of said act.

4th. Neither in the State Courts in Louisiana, nor in the United States Courts in said State, can the execution of a judgment be suspended upon motion for a rule to stay execution. The execution of a judgment in that State can only be suspended upon petition, affidavit and bond given for injunction.

The following authorities very clearly establish the above proposition :

In *Clement* vs. *Oakley*, 2 Robinson La. R., 91, the court say : "The code of practice points to an injunction as the proper proceeding to arrest the execution of an order of seizure and sale."

The case of *Monot* vs. *The Bank of the United States*, 4 Robinson La. R., also decided that the execution of a judgment could not be suspended or arrested by rule, but only upon security and an injunction, as provided by the code of practice.

In the case of *The State* vs. *The Judge of the Second District Covrt*, 9 Annual, 301, motion for a rule to show cause why the execution should not be set aside, upon the ground that the same was issued contrary to law, but the court overruled the motion, and reaffirming the principles of the causes above cited, again declared that—

"The right of the plaintiff to execute the judgment he has obtained for a sum of money, can only be suspended upon a petition, affidavit and bond given for injunction."

To the same effect also, are the following authorities:

The State et rel, &c., vs. *Judge of the 4th Dist. Ct.* 18th Annual, 110.

Wiley vs. *Woodman*, 19 *Annual*, 188.

Louisiana Code of Practice, Art. 296, 304.

Thus we have an unbroken current of decisions of the highest court of Louisiana in support of the above proposition, each in harmony with the provisions of the statutes of that State, upon this subject.

The circuit court of Louisiana erred in not adopting those decisions as the rule by which it should have disposed of the plaintiff's motion to set aside the execution, issued by the circuit court upon said judgment. In the case of *The United States* vs. *Morrison*, 4 Peters, 124, Chief Justice Marshall, delivering the opinion of the court, held:

"That this court follows the decisions of the highest court of the State on a question of interpretation of the State statutes concerning executions, and reverses the judgment of the circuit court, though that decision was made since the decision of the circuit court."

In the case of *Nesmith et al* vs. *Sheldon*, 4 McLean, 375, Judge McLean recognised this rule as applicable to the circuit courts, and held that the decisions of the highest tribunals of State, involving the construction of local laws, must be followed by the circuit courts of the United States. He uses, in discussing this question, the following language:

"On all questions involving the Construction of State laws, which do not conflict with the constitution or laws of the Union, the Federal Courts follow the adjudication of the Supreme Court of the State as a rule of decision * * * * So far has this judicial policy been carried by the Supreme Court of the United States *as to reverse* their own decision, made conformably to State decisions when a

new rule was established by the State Court. Under such sanctions, this court can feel no hesitancy in following in the present case the State decision. *And we have only to remark with the greatest respect for the high tribunal of the State, that we yield to the established policy of the Supreme Court and not to our legal convictions.*"

To the same effect also, are the following authorities :

B'k of the U. S. vs. *Longworth, et al*, 1 McLean, 35.
Nesmith vs. *Sheldon*, 7 How., 812.
Heydock vs. *Stanhope*, 1 Curtis, 471.
Green vs. *Neal*, 6 Peters, 291.
Suydan vs. *Williamson*, 24 How., 427.
Leffingwell vs. *Warren*, 2 Black, 599.
Webster vs. *Cooper*, 14 How., 504.

If the principles so clearly declared in these cases shall be applied to the decision of the questions involved in the case under consideration, then it results that it must be held that each of motions made by the defendant to set aside the execution, issued upon said judgment from the Circuit Court, should have been denied. They were both unauthorized and irregular, for they made no case for the issuing of an injunction, according to the code of Louisiana. And the district judge seems to have been impressed with the correctness of these propositions when he denied and over-ruled the *first* motion made by the defendant to set aside said execution.

5th. The Circuit Court had neither power or authority to dismiss the case out of that court, and deprive the plaintiff of the right to execute said judgment as provided in the third section of the act of Congress, approved July 28, 1866.

A. The record informs us that the Circuit Court, for reasons "*orally assigned*" "*ordered and decreed that* the cause be dismissed, *as proceedings which under the act of Congress, approved July* 28, 1866, *must remain in the ar-*

chives of the Clerk of the District Court of the United States, for the District of Louisiana."

The defendant by this decision got more than his motion called for, because he only asked that the execution issued upon said judgment "*be quashed and recalled.*" It is perhaps much to the credit of the judge who made this remarkable decision, that he did not attempt to place upon record the reasons therefor. It was undoubtedly wise for him to satisfy his judicial conscience with reasons "*orally assigned.*"

If the plaintiff had recovered his judgment in the provisional court then the act of Congress upon which the decision of the Circuit Court was based, declared that "all such" *judgments* "shall at once become the orders, decrees and decisions of said District Court, or said Circuit Court" and it was not within the power of the Circuit Court, to deprive the plaintiff of the benefit of a judgment obtained by him in the provisional court. The Circuit Court had no duties to discharge in respect to such judgments, except to see that they were executed, for the benefit of the persons in whose favor they may have been rendered.

The decision of the Circuit Court cannot be sustained except upon the assumption that the proceedings in the action for the *nullity* of the judgment instituted by the defendant in the provisional court had acted upon said judgment, had set it aside, and rendered it no longer a finality; and that the case in which said judgment was rendered was "a cause pending" of which the Circuit Court could not take jurisdiction.

The motion to docket the case in the Circuit Court averred that the plaintiff was a citizen of the State of Louisiana, aud that the defendant was an *alien* owing allegiance to the French empire. These were jurisdictional facts, and conferred upon the Circuit Court jurisdiction of

the parties as well as of the cause of action. If therefore the Circuit Court had come to the conclusion that the judgment of the provisional court had for any reason ceased to be a final judgment, it should nevertheless have retained the cause and proceeded to hear and determine it under the provisions of the first section of the act of July 28th, 1866.

The defendant could not avail himself of a want of jurisdiction in the Circuit Court by *motion*, unless that fact appeared from the papers upon which the plaintiff relied to maintain his action.

The defendant could only take advantage of the fact that *he* was a citizen of the State of Louisiana, and thus defeat the jurisdiction of the Circuit Court by *plea in abatement*.

De Wolf vs. *Rabaud*, 1 Peters, 476.
Sheppard vs. *Graves*, 14 How., 505.

B. The court will not fail to observe that both of the motions made by the defendant in the Circuit Court had the same object, and that was to secure without payment of the judgment the annulment and return of the execution issued thereon. It will be observed also that no reasons are assigned for the second motion which did not exist when the first was made. It is well settled that courts will not entertain *two* motions made for the same purpose, where the first of such motions has been considered and decided by the court in which they are made.

Chitty's Practice, vol 3, p. 574.

In Louisiana the Courts decide in accordance with these principles. In the case of *Buel* vs. *The New York Steamer et al.*, 17 La. R., 541, the court upon this subject use the following language:

We are *not* ready to say that a defendant should be permitted to take a second rule *even for a new cause*, after having unsuccessfully attempted to sustain the first one

for the same purpose, unless the new cause should have arisen afterwards.

And in the case of *Harlan* vs. *White & Trufant*, 18 La. Ann. R., 399, the court again declare:

We think it clear that after disposing of the first rule, the second could not be sustained. Such a mode of practice would result in vexatious and interminable litigation.

In the case of *Child, Pratt & Fox* vs. *The United States*, Drake, C. J., delivering the opinion of the court upon this question, used the following language:

One other question arises which should be considered, to wit, whether a second motion for a new trial ought to be entertained.

Without undertaking to decide that point as to a *second* motion differing from one previously overruled, we have no difficulty in holding that a second motion based on the same ground as the preceding one, ought not to be considered. The denial of the first makes the matter *res adjudicata*; and if we can be called upon once to review our judgment on that point, why not a dozen times? * *

This then is simply a case of a second motion resting upon the same grounds as a previous one which was overruled.

6 Court of Claims R., 85.

This court, when it shall have examined the record in this case must conclude that the Circuit Court decided correctly in overruling the first motion of the defendant to quash and recall the execution issued upon said judgment.

We invite the attention of the court to some of the reasons which must lead to this conclusion:

1st. That the provisional court of Louisiana, in the exercise of its judicial authority, rendered a judgment in favor of the plaintiff and against the defendant for the amount stated in said execution.

2d. That said provisional court had jurisdiction of the

cause of action, upon which said judgment was rendered, and that the defendant was legally served with citation, as required by the code of practice of Louisiana, a sufficient time previous to the rendition of such judgment, and that the defendant had *constructive* legal notice of the pendency of said action.

3d. That the proceedings instituted by the defendant, in said provisional court, against the plaintiff, did not affect said judgment, nor were the causes alleged for such proceedings, sufficient to sustain or authorise a decree for the nullity of said judgment.

4th. That the said provisional court had not jurisdiction of the action for the *nullity* of said judgment, and the defendant could only proceed in the provisional court by bill in equity to set aside said judgment, and enjoin the plaintiff from proceeding to execute it.

5th. That admitting all the facts stated by the defendant in his petition for the nullity of said judgment to be true, there was no case made for the exercise by said provisional court, of its equitable jurisdiction in respect to said judgment.

6th. That the injunction issued by the provisional court against the marshal of said court to prevent his proceeding to levy the execution issued upon said judgment, did not affect said judgment, nor did such injunction reverse, annul or set aside said judgment.

7th. That upon the passage by Congress of the act approved July 28, 1866, the judgment rendered by the said provisional court, became the judgment of the United States District Court for the eastern district of Louisiana.

8th. That said judgment being in the United States District Court for said district, in virtue of the provisions of said act of Congress, the said plaintiff had a right to have the same transfered to the United States Circuit Court for said district, and to have an execution issued thereon.

9th. That the Circuit Court could not *suspend* the execution of said judgment upon the *motion* of the defendant. That result could only be accomplished by the defendant filing his petition, affidavit and bond for an injunction.

10th. That each of the motions to quash and return the execution issued upon said judgment, made by the defendant in the Circuit Court, were made for causes not appearing upon the record, but were based upon *unsworn* statements of matters *dehors* the record; and each of said motions also sought to impeach and call in question material facts which do appear from the record.

11th. That the said Circuit Court was not authorised to entertain a *second* motion to quash and return the execution issued upon said judgment after a similar motion for the same purpose had been made and overruled by said Circuit Court.

These propositions being admitted, then it necessarily results that the Circuit Court erred in ordering the case upon which said judgment was issued to be dismissed from the Circuit Court and remanded to the district court as a case pending therein of which the said Circuit Court had no jurisdiction.

The judgment of the Circuit Court should therefore be *reversed*, and the case remanded to said Circuit Court, with directions to said court to cause the judgment of the said provisional court in favor of the plaintiff to be executed by said Circuit Court, as provided in the *third* section of the act of Congress approved July 28, 1866.

In conclusion we desire to call the attention of the court to the fact that neither in the petition for the nullity of the judgment in the provisional court, nor in the motions to set aside the execution issued by the Circuit Court, is there any suggestion that the judgment rendered in the provisional court against the defendant was inequitable, unjust, or recovered by fraud or other unauthorized prac-

tices on the part of tne plaintiff. It is not suggested, either, in any of these proceedings that the defendant has or had any defence to the action brought against him in the provisional court, upon which said judgment was rendered.

All the objections taken by him to the judgment and the execution issued thereon are of a *technical* character, and in no way affect the question of the legal liability of the defendant to satisfy and discharge said judgment.

WEED & CLARKE,
Att'ys for Pllaintiff in Error.

CASE & ROUSE,
Of Counsel.

United States Supreme Court.

DANIEL EDWARDS,
PLAINTIFF IN ERROR,
vs.
EMILE TANNERET.

BRIEF OF COUNSEL OF DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The plaintiff in error, who was also plaintiff below, sued the defendant in December, 1864, in the United States provisional court for Louisiana, and obtained judgment against him for upwards of four thousand dollars, on the 13th of May, 1865. (See Trans., pp. 17 and 18.)

On the 8th July, 1865, the defendant, Tanneret, filed his petition in the same United States provisional court for Louisiana, setting forth the grounds for an injunction against the execution obtained by plaintiff on the judgment above described. (See Petition for Injunction, Rec., pp. 21 to 23.) And thereupon the judge of the United States provisional court ordered an injunction to issue as prayed for, (see Rec., p. 23,) on defendant furnishing bond, with security, in the sum of nine thousand dollars, which was given, (see Rec., pp. 23 and 24,) and due notice served upon plaintiff, personally, on the 17th July, 1865. (See Rec., p. 25.)

In this condition the matter remained in the United States provisional court for Louisiana until the 23d December, 1868, when the plaintiff, Edwards, by his counsel, appeared in the circuit court of the United States for the district of Louisiana, and made suggestions

to the court that he had obtained the judgment in the United States provisional court for Louisiana, above described, and found at Record pp. 17 and 18, and omitting all mention of the injunction which had restrained the execution of that judgment, and suggesting that defendant was an alien, and citizen of the Empire of France, obtained an order to transfer to said court the case at law, in which he had judgment, leaving behind and out of view, as if not existing, the proceedings in injunction, (see Rec., p. 1,) and actually issued a writ of *fi. fa.*, though he knew he was then under injunction to proceed no further at law. (See Rec., p. 18.)

This eccentric practice of the plaintiff was brought to the attention of the circuit court by the counsel of defendant on February 9, 1869, when the facts were suggested to the court, and an order on plaintiff to show cause obtained why the execution and other proceeding should not be quashed and set aside, (see Rec., pp. 19 and 20 ;) but on hearing the parties this motion was dismissed. (See Rec., p. 25.)

On the 20th February, 1869, the motion was in substance renewed, (see Rec., pp. 25 and 26 ;) and on the 11th March, 1869, after hearing the parties, the circuit court ordered that the cause be dismissed, as proceedings which, under the act of Congress approved July 28, 1866, (see 14 Statutes at Large, page 344,) must remain in the archives of the clerk of the district court of the United States for the district of Louisiana. (See Rec., p. 27.)

From this plaintiff prosecutes a writ of error.

POINTS.

First. The first section of the act of 28th July, 1866, (14 Statutes at Large, p. 344,) transfers all records, suits, and proceedings of the United States provisional court of Louisiana to the United States district court for the eastern district of Louisiana ; at which date there existed no court of the United States called the " United States dis-

trict court for the eastern district of Louisiana." (See act of 27th July, 1866, 14 Statutes at Large, p. 300.)

The act further provides, sec. 2, that any suit or proceeding so transferred, of which the circuit court could take jurisdiction under the laws of the United States, shall in like manner be heard and determined in the circuit court *held in said district*.

All suits must go in the first instance to the district court, and those of which the United States circuit court have jurisdiction may be transferred from the district to the circuit court.

Second. The circuit court said (Rec., p. 27) that the suit of Edwards *vs.* Tunneret was one which under the act must remain in the district court; that is, it was one of which the circuit court had no jurisdiction.

Third. The circuit court tried the issues without a jury, and gave judgment after hearing evidence on the law and the fact. (See Rec., p. 27, at top.) The parties thus constituted the judge an arbitrator and his findings conclusive.

Graham *vs.* Bayne, 18 Howard, p. 62.

Fourth. The petition filed in the United States provisional court of Louisiana styles the plaintiff a "loyal citizen residing in Louisiana;" *i. e.*, a citizen of the State where the suit is brought—Louisiana. (Record, p. 1.)

The citation issued to defendant on this petition styles him a citizen of the State of Louisiana. (See Rec., p. 6.)

See Sedam *vs.* Williams, 4 McLean, p. 56.

On the face of the record, then, the circuit court could have no jurisdiction, and the order of the lower court for the case to remain in the district court was right.

Respectfully submitted.

THOMAS J. DURANT,
For Defendant in Error.